LAND O' THE BRAVES

by

Curtis E. Jackson

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Approved:

Chairman, Thesis Committee

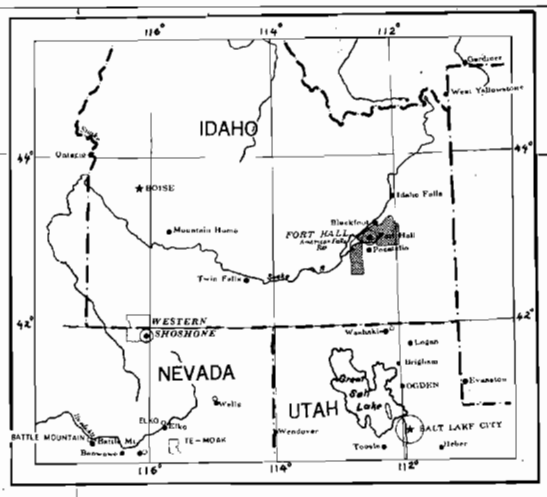
Head, Major Department

Dean, Graduate School

University of Utah
1947

to

THE AMERICAN INDIANS



DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FORT HALL INDIAN RESERVATION
IDAHO
1945

Scale of Miles

0 1 2 3 4 5 6

LEGEND

- Hardsurfaced roads
- Graded roads
- Graveled roads
- Unimproved roads
- Railroads
- Telephone lines
- Permanent streams
- Seasonal streams
- Springs
- Springs Improved
- Lakes and reservoirs
- Wells with windmills
- Wells with windmills and trough
- Wells

Compiled and drawn from aerial photographs, GLO plats and other data. The water level shown for the American Falls reservoir is the mean high water level.

E.H.Coulson,
Chief Engineering Draftsman
Division of Forestry and Grazing.

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FOREWARD

Historically, the United States Government is the symbol of workable democracy, and the force of American Government bursts now with atomic force the world over. The necessary resources of America are utilized today to supplant the dictatorships and authoritarianisms of foreign countries with a semblance of self-government. Still, at the same time, the mainstay of workable democracy, on its own home ground, seems to close its eyes to the very obvious totalitarianism within its own boundaries.

It may seem strange indeed to relate that there are citizens of the United States who have for long years sought - rather unsuccessfully - the substitution of democracy in place of imperialism within the territorial limits of the United States. Nevertheless, such appears to be the case for the problem of imperialism within the democracy of the United States is as old as the United States Government itself. It deals with a subdued race of people - the American Indians, and the full impact of engendered absolutism within the American democracy rings relentlessly in the ears of living citizens of the United States many of whom participated in global wars for the preservation of a free American way of life.

The facts are a matter of recorded history.

With the establishment of Indian reservations and at the close of the geographic American frontier, the Indians were hemmed in the circles of Caucasian civilization, and there developed the principle of "guardian-ward" relationship between the government of the United States and the Indian people. Plenary control over Indians and their affairs was assumed by Congress whose wishes were translated into action through a federal bureau headed by the Commissioner of Indian Affairs and his staff on the national level and the superintendent and his staff on the reservation level. Complete expression and practical application of imperialism within American came through the Dawes Act of 1887 and other similar pieces of Congressional legislation directed at specific reservations.

In effect, the implied policy of the guardian under the Dawes Act was to protect its wards from despoil by greedy settlers; to civilize the Indians; and to open the avenues for complete assimilation of the Indian people into the non-Indian society. Historically, the practicality of the Act of 1887 was far removed from the implied policy which partook of the then-existing but, nevertheless, waning theory of rugged individualism.

> To smother, to exterminate the extirety of the Indian heritage became the central purpose of Indian affairs. Extermination was applied beyond the tribe and its government to the local community governments

> out of which the tribes were compounded, and beyond the local governments to the family . . . . . As tribe and local community crumbled under the pressures, remote authority had of necessity to be extended past the group to the individual and this authority was applied horizontally and exhaustively . . . . . Invidious absolutism and yet benevolent: invidious toward all that constituted Indianhood, toward every instrument for moulding or implementing personality, while yet benevolent toward the individual Indian. And through its benevolence, the far more subtly destroying. Always through so many mediums, the Indian was told that as a race he was doomed to failure by social inferiority or impracticibility. Always he was challenged to build a new personality out of no cultural heritage at all.
>
> --John Collier, Former Commissioner of Indian Affairs.

For nearly half a century during which the non-Indian civilization had emerged into the industrial state and during which the American people, including the Indians of the United States, settled an argument with foreign countries "to make the world safe for democracy," the American Government through its Office of Indian Affairs was not only blind to the deadness of rugged individualism but equally as unimpressed by the Indians' pleas for the expression of democracy on reservations.

Administrators of Indian affairs, from the Secretary of the Interior and the Commissioner of Indian Affairs to the Indian Agents and superintendents, appear to have regarded the Indians not so much as the Indians were but as the administrators themselves, presumably, were and conceived the Indians should become. Thus, such descriptive

words as "savages," "uncivilized," "barbarious," and "imcompetent" - descritions of the Indians which were never challenged, but often used by the administrators - blotted out the more appropriate terms which could have been applied to the Indians. The highly-civilized Axtecs were no less "uncivilized" - no less "savage" - than the Arapahoes, the Utes, the Cheyennes, and the Shoshones whose pre-Caucasian tribal governments were the symbol of workable organizations that result only after years of development.

To the administrators of Indian affairs, the Indians' way was totally wrong and disgustingly unproductive. The non-Indians' way was too-obviously right. The Indian was lost in the maze of a new world of Caucasian civilization, but if he were to undergo a complete metamorphesis, he would evolve a "competent" and a "civilized" citizen of the United States. The vast undertaking of acculturation was entrusted to a succession of administrators who, each having his own ideas, apparently disregarded the cogent proposition that human nature is exasperatingly stubborn to quick and abrupt change.

The loud cry of the original Americans for participation and consulatation in matters which affected their everyday lives and their group affairs was but an unheard whisper to the powerful totalitarians of the

Office of Indian Affairs. Chieftans became legends from the pens of poets as they were trampled beneath the imperialism of reservation superintendents backed by the total force of the majestic Office of Indian Affairs, and the tribal members themselves, under the wreckage of tribal governments, had either to succomb to autocratic or suffer the injuries of arbitrary discriminations should they oppose the oppressions of imperialism through either single or collective voice.

And yet during the years, the dismal failure of the application of rugged individualism among Indians, and the heinous consequences of absolute rule over Indians were clearly apparent to enlightened observers of Indian affairs. Outside the Indian Office, forceful and recognized friends of the Indians painstakingly gathered the data to prove the inefficacy of the then-prevailing "Indian" policy. No less meticulously had they prepared the plans by which self-government should prevail among the Indian citizens of the United States. And after 47 long, enduring years, the Wheeler-Howard Act of 1934 was offered in restitution for the almost-complete annihilation of the once proud and mighty nations of American Indians.

To protect the wards from further loss of ground through outlawing alienation of Indian lands; to establish

a forward-looking educational program; to encourage group enterprise and its attending individual development, and to foster native arts and crafts was visualized in the new theme of "Indian" policy.

At long last was ear to be given to the feeble voices of long-suffering and deeply-oppressed peoples!

But the law of the land was not so rigor as to withstand the burden of the developed imperialism of the stalwart Office of Indian Affairs. Congressional law crumbled under the deadweight of hangovers from years of drunken power for too long had the imperialists' ears been deaf to the cries of the Indians and too long had the Indians been held in mute abeyance by ficticious knights armed with "invidious absolutism" and set upon foolhardy adventures of Cervantes' Don Quixotes.

Since the organization of the Bureau of Indian Affairs, 34 different Commissioners, lasting from five months to twelve years as heads of the Bureau, have had the unchanging green light to drive their individual ideas of social welfare and advancement into the lives of human beings. Their ephemeral ideas are the bases upon which are built the policies of the Indian Office.

The head of the Office is not chosen primarily because he has a keen insight into the Indain problems.

(This does not mean that some of them haven't had sincere appreciation of Indian problems.) His friendship, in one way or another, with the Secretary of the Interior who recommends his appointment far precludes any deep appreciation and understanding of the Indians and their affairs or any comprehension of social welfare and advancement. Yet each succeeding Commissioner of Indian Affairs has had the Congressional authority originating the the Constitution of the United States to formulate policies and to manage all Indian affairs. The Commissioners delegate authority to the reservation superintendents who purport to inject the policy of the Commissioners into the bloodstream of the Indians. What the Commissioners and the superintendents are, and what their ideas embrace is eventually expressed in the daily lives of the Indians. Policies are almost as rapidly changing as the appointed heads of the Indian Office, and reservation programs are no more stable than the constantly-transferring superintendents - all to the total bewilderment and utter confusion of the human "guinnea pigs" upon whom the individual ideas and noble plans of the imperialists are forced by law.

What the American Indians are today is what 150 years of different administrators' experiments and more

than 4,500 specific best wishes from the Congress of the United States have produced. Twelve years under the Indian Reorganization Act which presumably decentralizes Indian affairs into the chambers of Indian councils have only added time to the reign of "virtual rulers" within democratic America. Still "invidious absolutism," but not longer benevolence. And Indian policy is yet "Indian" policy.

This paper deals with some of the economic problems of the American Indians over the years during which administrators of Indian affairs have seen their ideas materialize. It is a treatise on the effect of important laws and policies that have been influential in the economic lives of the Indians, and an appraisal of the intensity of the problems which have increased with the severance of tribal governments and the coalescence of the gigantic Office of Indian Affairs.

The author is sincerely grateful to all those who contributed to the production of this paper - to the numerous professors at the University of Utah who so unselfishly devoted their time in discussion with the author; to the Indian people who inspired the work, and to the author's individual Indian friends whose unreserved information supplied much of the material for the

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C.E.J.

CHAPTER I

INTRODUCTION

Without tracing interesting events which are found in almost any historical treatise, it can be said in a few words that the struggle for a foothold in the Americas was between several big powers of the European continet; notably, England, France, and Spain. Later, a handfull of brave and courageous statesmen boldly reckoned with those foreign powers; particularly, England, and started a lessor government composed of thirteen states embracing a great share of the land east of the Mississippi. The new and precocious little government concluded a transaction with Napoleon for the Louisana territory. A little later, it settled a dispute with England over the Oregon country. The almost concurrent annexation of Texas, 1845, the cession of vast holding by Mexico, 1848, and the Gadsden purchase, 1853, added successively to the landholdings of the young nation. In all those diplomatic dealings for the land which embraces what is now the United States, the American Indians, owners of the land by virtue of possessory right, were not parties in the negotiations.[1]

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[1]Wissler, Clark "Indians of the United States," Doubleday, Doran and Company, New York, 1940, pp 1-25.

Of course, Indians were encountered by the skipper and the men of the Mayflower, and by the Pilgrims, and by all the other early-arriving European immigrants, but those people, too often in a manner which now looks to be anything but the practice of fair-dealing men, quickly and with armed force, dispossessed the Indians of the fertile soils along the Atlantic Coast.[2] Tough resistance began because land to the Indians had always meant much; although, never in the same way as it had meaning to the immigrants. Cheap land in America: the distinction of becoming a landholder impossible under the feudal system of the old country - these and other things lured droves of immigrants to the American Continent.

The Indians who inhabited the Atlantic Coast region are reported as being hospitable and as having contributed greatly to the problem of existence of the early immigrants faced squarely with starvation in the new land. The Indians showed the people from Europe how to plant, what to plant, and when to plant. They showed those people how to hunt and what to hunt, how to fish, and how to live on the natural growths of the land until the crops matured.[3] The Indians

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[2]Fred A. Shannon, "Economic History of the People of the United States," The Macmillan Company, New York, 1936, p 64.

[3]John D. Hicks, "The Federal Union," Houghton mifflin Company, The Riverside Press, Cambridge, Massachusetts, 1937, p 2.

taught the early-arriving Europeans many things about an abundantly-rich continent. Soon the people from abroad out distanced the Indians, and a spreading civilization rebounded.

The fact that so many foreign powers claimed possession of the land east of the Alleghanies called for homogeneous cooperation of people from the same mother country. In fact, if an Englishman were found on French territory in the Americas, he might be uncermoniously guillotined. The War of Independence; the launching of the American Government; the lengthy bickering over territory east of the Mississippi, and the struggle to hold the new nation in one piece all added to the delay in the settlement of the New World. Finally organized as an inseparabel Union, the Government of the United States encouraged the exploration and the settlement of its expansive landholdings.

Lo, the unsuspecting Indians! Here upon land that had always been good to them were the "palefaces" mighty in number and force and ruthless in action. Here was a civilization that slew wild game for the thrill it provided - a civilization that dissipated the virginity of Mother Nature! Here was a people who built permanent homes upon conquered lands - who, in protecting those homes, called the Indians "savages," and pushed them westward.

Painted warriors galvanized in mass resistance to this new and reckless civilization.[4]

The first major counter-attack sprang up among the Deleware Indians. Redskins had by this time noted that as networks of log cabins supplanted primeval forests their centuries-honored subsistence diminished, and they hummed lengthy and brave songs with bows and arrows. The historical encounter ended with the "Treaty With The Deleware Nation of September 17, 1778" and set off the fuse for a series of three hundred eighty-nine treaties with the Indians who were pushed ever and ever toward the setting sun as the long fingers of the Caucasian civilization stretched toward the Pacific.

Treaties were expedient maneuvers calculated to lessen the intensity of, or to halt, hostile Indian uprisings during the settlement of the New World, and, among other things, treaties established the braves' territory by metes and bounds.[5] But as land within the treaty-defined boundaries of Indian country was found to be agriculturally productive as were the more fertile valleys of the west, or glittering with cherished metals as were the Black Hills of Dakota and the gold-rush lands of

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[4] Ibid., John D. Hicks, pp 109-114.

[5] Op.cit., Fred A. Shannon, p 425.

California, and as the thought that "The only good Indian is a dead one" gathered momentum, greedy encroachment upon Indian land was pursued by frontiersmen activated by the pre-emption act and other Congressional expressions of the liberal Federal land policies.

And the battles between the whites and Indians raged![6]

It was not until a statistician estimated that the cost to the Government to kill and Indian was $1,000,000.00 and imparted the thought that "It is cheaper to feed them than to kill them" - not until the tatooed warriors were re-located upon isolated lands not desired by the squatters and not productive enough to sustain the beaten Redmen that the constant friction between the whites and Indian meaurably decreased. The new and out-of-the way lands to which the defeated Indians were finally driven were established as Indian reservations.[7]

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[6]During the period 1701 - 1890, a total of 153 major battles were fought between the whites and Indians, the last of which was the Battle of Wounded Knee. Carey McWilliams, author of "Brothers Under The Skin", contends that the Wounded Knee conflict "was not so much a battle as a premeditated massacre of several hundred defenseless Indians." Most of the major battles ended with treaties; however, the act of March 3, 1971 prohibited further treaties between the United States and Indian Tribes. This act is based upon the theory that the government of one nation cannot recognize the existence of another nation within its own boundaries. After this act was passed, agreements were made between the United States and the Indians.

[7]Op.cit., Fred A. Shannon, pp 430-437.

By the fate of American ingenuity, machines came into existence and some of the reservation lands proved to be gushing with needed petroleum. Indians of such lands found themselves swimming in riches, but some of them and their rich lands were lost in the whirlpools of their crafty white brothers. Moreover, about this same time, the American frontier was rapidly drawing to a close, and belated settlers began to cast fervid eyes upon the untouchable Indian reservations showing agricultural possibilities. Three years before the year considered to be closing of the geographical American frontier, Congress enacted legislation which recognized the eager settlers' increasing pleas for more land.

CHAPTER II

ALLOTMENTS IN SEVERALTY

The 1880's are significant years in the history of the American Indians. They are the years during which the Congressional law, the Dawes Act of 1887, which became the basis for the following half century of Indian legislation, ran the gamut of discussion. That act authorized the President to cause any reservation, or any part of it, created, or thereafter created: "To be surveyed, or resurvyed if necessary, and to allot the lands in said reservation in severalty to any Indians located thereon . . . . ."

The proponents of the act, often called the General Allotment Act, firmly believed that the economic rehabilitation of the Indians was attainable only through individualization of reservation lands. It must be sincerely appreciated that the power of the proponents of the Allotment Act was generated by a genuinely sincere desire to promote the welfare of the Indians; yet it is equally fundamental to note that the act was conceived amid confusion on the one hand and without proper cognizance of the trend of economic development of the other.

Prior to the passing of the Dawes Act, all Indian lands were held as community property in which the

individual had no vested interest except that which may have been given him by the tribal council. Concerned observers of Indians were showing a grave disgust toward the long-practiced Indian communal economy, and they undoubtedly discounted the tremenduous strides being made by the Five Civilized Tribes under their community arrangement. The proponents observed that, generally, the Indians had been despoiled of natural subsistence and that the greatly-diminished land of the braves, in order to support the Indians, must be exploited. This exploitation, they believed, should be handled individually so that the Indians would be instilled with the white mans' way of making a living. Individual exploitation of the land, they held as they turned aside from the Pueblo system of individual enterprise on communally-owned land, was possible only through individualization of the reservation lands. Allotments, of course meant destroying the one cooperating unit - the tribe - to which Indians were culturally attuned.

Nor did the advocates of allotments take proper cognizance of the limited possibilities of the then-prevalent rugged individualism in the non-Indian societies. While the pioneers and the early settlers made their own clothing, built their own homes, and were otherwise self-sustaining individuals, the things they had and enjoyed were limited often to the extent of their own production.

To such a limitation was the individual Indian to be driven by the proponents of the General Allotment Act.

But the act encompassed more than that. Believers of allotments envisioned ultimately a civilized population of Indians.[1] Unallotted reservations, they believed, contributed to unneeded communal solidarity; to mass shiftlessness; to ignorance and to irresponsibility sometimes culminating in the outburst of pent-up emotions by raids on neighboring villages and settlements. War parties were all too easily organized among defeated warriors who had little to do but pass the day thinking about how the wanten victors treated them. Communally-owned lands, it was pointed out after the act was passed, blotted out the intent of the Government to civilize the Indians.

> That hitherto, under tribal relations, the progress of the Indian toward civilization has been disappointingly slow is not to b wondered at. So long as tribal relations are maintained so long will individual responsiblity and welfare be swallowed up in that of the whole, and the weaker, less aspiring, and more designing, shrewd, selfish, and ambitious headmen. . . . .He (the Indian) was taken a hostile barbarian, his tomahawk red with the blood of the pioneers; he was too wild to know any of the arts of civilization . . . . Hence some such policy (as the Allotment Act) had to be resorted to to settle the nomadic Indian and place him under control. The policy was a tentative one, and the hole series of

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[1]Reports of Commissioner of Indian Affairs, (Report of the Agent of Yankton Sioux.) Government Printing Office, 1887. pp 58-60.

> experiments, expedients, and make-shifts which have marked its progress have looked toward the policy now made possible and definitely established by the allotment act."[2]

Furthermore, proponents of the allotment system argued that Indians could hold their lands against unscrupulous settlers if the Government would issue patents on the land showing that the Indians in severalty were the legal owners.[3] This reasoning may have been seen to have some importance today if reservations had not been set aside by Congressional law and if the Government were not equipped the legal machinery necessary to protect the Indian communal ownership of reservation lands. At any rate, the allotment act provided for the issuance of patents declaring that the United States held the land in trust for the sole use of the allottee. At the end of the trust period, an unrestricted fee-simple title was to be issued conveying to the individual Indian, whether he wanted it or not, his allotment free of all encumbrances. This would signify that, at last, the Indian was civilized - competent to manage his own affairs.

The Indians, generally, were not favorable toward

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[2]Report of the Commissioner of Indian Affairs, 1887, p 9, Government Printing Office, Parenthetical phrases are supplied by the author.

[3]Handbook of Federal Indian Law, U.S. Dept. of Interior, 1938, p 208.

the allotment system.[4] They had learned from nearly four centuries' experience the numerous machinations employed by deft settlers in obtaining land, and they opposed allotments as vigorously as they fought the expansion of the American Empire - and with about as much success. The Five Civilized Tribes and a few other tribes succeeded in being excluded from the provisions of the General Allotment Act. The Nez Perce who were eventually included under the provisions of the act, prior to the passing of the measure, went on a bloody warpath because, as Chief Joseph explained: "They asked us to divide our land, to divide our mother upon whose bosom we had been born, upon whose lap we had been reared."[5]

Nevertheless, the General Alltoment Act, a product of sincere but frustrated parents became a living symbol of the brave thinkers of the late Nineteenth Century. Belated settlers revered at its passage and set all the wheels at their command in motion for the act contained the provision that:[6]

> It shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase

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[4]Ibid., (Handbook of Federal Indian Law) p 210.

[5]Congressional Record, January 20, 1881, pp 781-782.

[6]Samuel Taylor, The Origins of the Dawes Act of 1887, (Harvard, 1927, unpublished thesis) pp 25-42, referred to in Handbook of Federal Indian Law.

> and release by said tribe . . . . of such portion of its reservation not allotted as such tribe shall from time to time consent to sell . . . . . That all lands adapted to agriculture with or without irrigation, so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual bona fide settlers only . . . . ."

Into the ownership of settlers passed 60,000,000 acres of unallotted or "surplus" lands purchased from tribes for about $1.25 per acre. Maybe the Indians were not altogether wrong in being suspicious of the Dawes Act of 1887!

It is worth noting also that during the decade in which the allotment act was passed twin ribbons of steel rails were crawling around the mountains and across the plains. Indians repulsed the "snakes" only to send such men as the builder of the St. Paul, Minneapolis, and Manitoba Railroad whimpering to Congress for legislation granting right-of-way through Indian reservations.[7] The session of Congress which passed the Dawes Act pushed through six bills for railroad grants out of the total of nine Indians bills which became law during that session.[8]

Railroad grants could have been made without recourse to individualization of reservation land; however,

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[7]Joseph G. Pyle, Life of James J. Hill, 1917, pp 385-386.

[8]Report of the Commissioner of Indian Affairs, 1887, pp 38-44.

Indian repulsion to railroads was strengthened by organizations which fomented under the communally-owned reservations. Allotments were designed to pulverize mighty organizations - to disburse tribal members and greatly weaken Indian resistance to the railroads. Individualizing reservation lands scattered the tribal members and allowed unimpeded progress in railroad building.

The Act of February 8, 1887 was general, but Congress passed subsequent legislation aimed at specific reservations. The Act of February 23, 1889, for example, ratifying an agreement between the United States and the Shoshone, Bannocks, and Sheepeaters of the Fort Hall and Lemhi reservations provided for allotments in severalty, for the cession of approximately 410,000 acres of land at the southeastern end of the Fort Hall reservation, and for the surrender of the Lemhi reservation. No allotments were made to Fort Hall Indians under authority of the Act of 1887 or the Act of 1889, and the persistent Congress, overlooking the progress of the Fort Hall Indians at Ross Fork Creek on the communally-owned reservation, approved, on March 3, 1911, another piece of legislation providing, among other things, for allotments in severalty. Individualization of the reservation lands was completed in the year 1914 after a total of 1,916 allotments had been made in quantities of from 20 to 40 acres of irrigable land and

160 to 320 acres of grazing land. As a result of the allotment of land at Fort Hall which the proponents of the measure sincerely believed would promote individual effort, the Indians who lived on and farmed the land along Ross Fork Creek on the Fort Hall reservation were disbursed, and their enterprise and initiative came to a sudden standstill.

Incidentally, on September 1, 1888, Congress granted the Utah and Northern Railroad right-of-way extending from the Blackfoot River to the southern boundary of the Fort Hall reservation. The railroad was built prior to the allotment of land in severalty which is further proof that railroads were not dependent upon individualization of reservation lands.

The Dawes Act which authorized the sale of "surplus" reservation lands contained the provision that the proceeds from the sale of lands were to be held in the United States Treasury for the sole use of the tribe or tribes to whom the reservation belonged, and the money, together with interest at three per cent per annum, was to be subject to appropriation by Congress for the education and civilization of the Indians whose land was sold.[9] The policy made

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[9]The power of Congress over Indians and their property originates in the commerce clause of the Constitution

possible by legalizing the allotment system was to dissolve communal organizations, and it was during the period of the break-up policy that "surplus" land sales yielded huge tribal estates. Usually, Congress individualized the tribal funds by directing the Secretary of the Interior to make equal per capita payments to the members of the tribes. Congress expressed itself through a series of legislative enactments. As an example, for the 410,000 acres of land ceded to the United States by the Fort Hall Indians, the Government agreed to pay to and expend for the benefit of the Indians the sum of $600,000. The Act of June 6, 1900 appropriated $100,000 and directed the Secretary of the Interior to individualize the money. During September, 1900, the $100,000 was paid to the Indians through per capita payments of $71.68.[10] Subsequent legislation appropriating the Shoshone-Bannock tribal funds directed the individualization of the funds through per capita payments.

It was not long after its enactment that the effects

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and is further based upon the principle of "guardian" and "ward." Unallotted land was tribal property over which Congress exercised plenary control. Likewise, funds derived from the sale of tribal lands are "wards" monies which are administered by the "guardian."

[10]Report of the Commissioner of Indian Affairs, (Report of the Agent at Fort Hall, Idaho) Government Printing Office, 1910, p 206.

of the Allotment Act appeared. While the Dawes Act contemplated civilized Indians striving toward economic security through individual effort at no cost to the Government, the proponents of the Act and Congress failed to back the legislation sufficiently with measures which would provide the Indians with the financial and educational assistance necessary.

In 1889, Professor Painter of the Indian Rights Association, in an address before the Lake Mohonk Conference said one of his Indian friends: "had indeed a vast but unusual possession; a large land estate but without team, implements, money, houses, or experience, and consequently without power to utilize a foot of it."

Professor Painter could logically have been more general than specific. From 1888 to 1900, a total of $105,000 was appropriated by Congress for the purpose of purchasing seeds, farm implements, and other things necessary for farming operations by the Indians. During the same period, a total of 64,853 allotments were made comprising 7,862,495 acres of land.[11] The total appropriations of $105,000 would have provided approximately $1.62 per allottee, or allowed for an expenditure of

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[11]Land Planning Committee, "Indian Land Tenure, Economic Status, of Population Trends," Part 10 of supplemental report to the National Resources Board, Government Printing Office, 1935, p 28-32, Table 6.

about one and a half cents per acre of allotted land.

The believers of rugged individualism eventually launched an inflexible credit system among Indians - the finance of reimbursable loans, and the stated purpose of the early loans was to encourage industry among Indians. The first appropriation for general reimbursable loans was made in 1911; although, by the Act of 1908, the Fort Belknap, Montana tribe had $25,000 appropriated to them for reimbursable loans, and by a similar piece of legislation, $10,000 had been appropriated to the Blackfeet tribe.[12]

The amount appropriated by the Act of 1911 was $30,000 and the use of the money was not confined to any particular reservation. Because, however, the appropriation was inadequate for general application throughout the country, and attempt was made to place the funds in the hands of those Indians of greatest need and worthiness. As years went by, annual appropriations for reimbursable loans increased having two sources - Treasury funds and tribal monies.

From the Treasury funds not otherwise appropriated, Congress made available by various acts monies to promote

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[12]The first reimbursable loans were made in 1866 in connection with the southern Cherokees visit to "The Great White Father." The first specific appropriations for industrial purposes was made in 1872.

agriculture and other industry among reservation Indians. The monies advanced to the Indians were to be repaid by the borrowers in accordance with the terms of written agreements. (See pages 19-20.) The appropriations from public funds have been called gratuity; although, a loan can hardly be said to be an altruistic gesture. A loan is a business proposition negotiated for definite purpose on the part of the parties involved. As far as the Government was concerned, reimbursable loans put the brakes on the constant raid on the Treasury for rations. The Indians, of course, were to have become self-supporting and economically independent by means of the financial aid of the reimbursable loans.

Among the purposes for which tribal funds were appropriated was that of reimbursable loans. To appropriate tribal funds to be used in personal enterprise by the Indians was but a method of individualizing the tribal estates built up by the sale of "surplus" or unallotted lands. Yet, the method of distribution was grossly inequitable. The policy of lending was on the basis of worthiness and need determined by the local officials in charge of the reservations. Furthermore, individualizing tribal estates on a reimbursable plan is ultimately not individualization at all because when the loans are repaid, the tribal estates increase by the amounts of repayments.

5-269

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE

19

Con. No. I ....., *Ind.* .....

Purchase Authority ....., *19*..... (Number) (Yr.)

Preceding Agreement No. .....

AGREEMENT TO REIMBURSE

Agreement entered into this ..... day of ....., 19....., between ..... of the ..... tribe of Indians, {party / parties} of the first part, and the Superintendent or other officer in charge of said Indians, for and on behalf of the United States of America, party of the second part, covering property, stock, or equipment purchased under the provisions of the regulations governing the use of reimbursable funds from

.....

.....

(Names of funds and amounts chargeable to each)

It is hereby agreed that the said {party / parties} of the first part, {his / their} heirs, executors, and administrators will pay to the said party of the second part, or his successors in office, the sums hereinafter shown as due, on the dates mentioned, which payments are to be in full consideration for the property, stock, or equipment listed below, the receipt of which is hereby acknowledged by said {party / parties} of the first part.

Item	*Amount*	*Brand and description of stock*
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....
.....	$.....	.....
TOTAL.....	$.....	

(Agency or school)

Payments to be made by said {party / parties} of the first part to the said party of the second part, or his successors in office, as follows:

Date due	*Amount*
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
TOTAL.....	$.....

Agreement No. .....

6—3140

It is stipulated and agreed that houses or other buildings and fences constructed hereunder, if any, shall not be considered a part of the realty; that the title to the above-described property, stock, or equipment shall remain in the United States of America until payment in full has been made, and that in default of payment, or in case of failure to properly care for, or have cared for, or use the same, the said Superintendent, or his successors in office, shall take possession of said property and remove it from the land or dispose of it in any other manner deemed feasible and proper, as set forth in regulations approved by the Secretary of the Interior to govern transactions of this character. In the event there is a depreciation in value or loss of property in any manner after its receipt by said {party / parties} of the first part, or the property cannot be recovered or disposed of by the party of the second part, it is agreed that the said {party / parties} of the first part, {his / their} heirs, executors, or administrators will make payment of such amount as may be necessary to fully reimburse the Government on account of such depreciation or loss.

It is further stipulated and agreed that any trust funds which said {party / parties} of the first part may now have to {his / their} credit in the Treasury of the United States, or in local banks, or may hereafter acquire, or any other personal property including crops, shall be liable to application by said party of the second part toward the settlement of this agreement until full payment has been made.

It is still further stipulated and agreed that upon payment in full by said {party / parties} of the first part, or {his / their} heirs, executors, or administrators from any funds except those held in trust by the Government of the amount of the consideration named herein, that the title, free and unencumbered, to the articles mentioned shall pass to {him / them}. Where funds held in trust by the Government are used in payment, it is agreed that, in event the party of the second part shall deem it for the best interests of the {party / parties} of the first part, the property shall not be sold or otherwise disposed of without the consent in writing of said party of the second part.

---------- [L. S.]

Allottee No. ----------

WITNESSES:

---------- (Address)

---------- [L. S.]
(Superintendent)

U. S. GOVERNMENT PRINTING OFFICE 6—3140

5-270 A

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

20

Authority ....., 19.....
(Number) (Yr.)

CASH LOAN AGREEMENT.

This agreement entered into this ..... day of ....., 19..., by and between ..... of the ..... tribe of Indians, party of the first part, and the Superintendent or other officer in charge of said Indians, for an on behalf of the United States of America, party of the second part:

Witnesseth, the party of the first part, his heirs, executors, or administrators will pay to the said party of the second part, or his successors in office, the sums hereinafter shown as due, in full consideration for the cash loan of .....
from .....
.....
(Name of fund.)

for the purpose
Development and cultivation of land $.....
Support of old, disabled, or indigent Indians $.....
Payments to be made as follows:
On or before .....

Date	Amount
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....
....., 19.....,	$.....

(Agency or School)

It is agreed and understood that the party of the second part will deposit the amount of said loan to the credit of the party of the first part for expenditure under the individual Indian money regulations.

It is further agreed and understood by and between the parties hereto that said loan will stand as a charge and lien against the following-described lands: .....
.....
.....
belonging to the party of the first part until such loan is repaid; that if necessary the land may be sold by the party of the second part to obtain payment of the loan; that in the event of the death of the party of the first part prior to the repayment of any or all of said loan the party of the second part shall have the right to deduct the amount due from the estate.

It is still further agreed that any trust funds which the party of the first part may now have or which may hereafter accrue to his credit in the Treasury of the United States or in local banks; any shares in tribal assets; or any other personal property, including crops, shall be liable to application by said party of the second part toward the payment of this loan.

Agreement No. .....

Witnesses:

Allottee No. .....

.....

.....
(Address)

.....

.....
(Superintendent)

Although it was a very inflexible system and was limited in its possibilities, reimbursable loans became a great part of the financial affairs of the Indians. The acts appropriating the reimbursable funds authorized the Secretary of the Interior to prescribe conditions for the repayment of the loans. Paragraph 30, page 7 of his regulations read, as follows:

> Unless all cash is paid in advance no reimbursable property must be delivered to individual beneficiaries until an agreement is first prepared, in triplicate, on Form 5-269, and signed by the field officer in charge, the beneficiary, and, when necessary, two witnesses. All copies of the agreements must be complete in every detail, including signatures.

Title to the property purchased by reimbursable funds was to remain in the Government until paid in full. The limit of the loans was established at $600.00, and although they were non-interest bearing, some of the loans were burdened with a 5 per cent surcharge. Supplementing the Secretary of the Interior and the Commissioner of Indian Affairs' rules were the personal regulations of the reservation authorities. The agent at Fort Hall, for

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[13]Actually the Indian "wards" lack contractual capacity, and even if they could enter into the agreements to reimburse, the Government's power over Indian property would render the legal force of agreements inoperative. The Supreme Court has held that the right of the Government to collect the loans is based upon the power of the guardian to administer the "ward's" property and funds rather than upon the Indian's signed agreement.

example, reported in 1915 that he would not make a reimbursable loan to any Indian who refused to have a haircut.[14] Apparently, the agent believed that the criterion of industry and initiative lay outside the skull of the Indians!

The individual loans took various forms - cash, seeds, plows, lumber for homes, nails, labor, livestock, and other things. Each loan borrower dutifully signed the agreement to repay within a definite period of time. But the Indians, immediately prior to the reimbursable system, had undergone a period of free rations, and the change from an economy of free rations to one of business credit was phenomenal to borrowers whose long history embraced no credit. Their thumb-prints on reimbursable agreements meant no more to them than the required mark on ration tickets.

Of the more than $5,000,000 appropriated to the reimbursable system from 1911 to 1938, a little more than half had been repaid by the Indians to 1944.[15] The total amount of reimbursable loans for industrial purposes

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[14]Reports of the Commissioner of Indian Affairs, (Report of the Agent of Fort Hall, Idaho.) Government Printing Office, 1915, p 272.

[15]"Investigate Indian Affairs," Hearings before a Subcommittee of the Committee of Indian Affairs, House of Representatives, Government Printing Office, December, 1944.

outstanding against the Fort Hall Indians on December 31, 1945 was $93,063.36 which represents an average per capita indebtedness of $46.53 based upon a population of 2,000 Indians. Reimbursable loans seemed to have more effect in decreasing the net worth of the Indians than in increasing it.

In attempting to produce civilized Indians, the advocates of rugged individualism seemed to have concentrated strenuously upon making the "savages" worthy citizens of the United States. This they did at the sacrifice of teaching the Indians how to become economically independent on their allotments.

> The emphasis of their thinking was in the direction of moral, civic, and cultural education. Practical assistance to the Indians was limited to the appointment of Government "farmers" and "stockmen." As is well known, these employees were often poorly qualified and even if they had been able to stimulate and assist the Indians in farm work, their number was inadequate. In 1900 there were only 320 farmers to 187,790 Indians, exclusive of the Five Civilized Tribes.[16]

Nor in the civilization and acculturation of the Indians did the allotment system show any appreciable promise. Teachers totally unappreciative of Indian life and often frightened at the sight of "barbarians" were put upon isolated reservations without the books and conveniences of public schools and at extremely low salaries.

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[16] Op. Cit., Land Planning Committee, p 8.

Perhaps the entire educational policy was too visionary. Allotments meant a sudden reversal of Indian attitude and conception toward land, and toward Indian life. The proponents of the allotment act apparently overlooked the slowness of time necessary for acculturation for they did not condone the teachers' cruel treatment of slow-learning students.

The Indians, too, registered there complaints about the allotment of land. The Allotment Act, as written, called for the division of land in a way which the Indians felt was discriminatory; that is, the act authorized an allotment to each individual from the infant to the centarian and thus permitted families to gain possession of land in accordance with the number in the family. The Indians felt that allotments should be made to the heads of the families only. Although they perhaps didn't know it, the Indians' complaints struck at two weakness of the allotment system. Allotments to every individual not only shattered family interests and worked as a divisive factor in the lives of all alloted Indians, but assumed that each individual regardless of age could make beneficial use of the land. The Indians' complaints of the allotment of land, in some cases, resulted in division of land in a manner which to them appeared more equitable.

To break up communal organizations meant more to

the brave proponents of the allotment act than to allot lands in severalty. It meant that every possible avenue must be opened for the Indians to leave the state of "barbarianism" and become included in the society of the "civilized."[17] The proponents of the allotment system were not content with narrowing the boundaries of reservations to enclose what is now their present area, and eager rattler's hands overshadowed untouchable estates. In 1902, the Congress spoke its deep concern for the welfare of the "wards" by passing the Act of 1902 which authorized the sale of heirship lands.[18] Again, by the Act of 1907, the voice of Congress was expressed, by permitting the sale of lands belonging to the original allottee.[19] Those two acts opened, "the sluice-way for a wholesale dissipation of Indian landed estate."[20]

The Commissioner of Indian Affairs after the passage of the two acts reported that the intent of the acts was not to further despoil the Indians of the land.[21] He indicated that the agents were schooling the Indians

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[17]Report of the Secretary of the Interior, 1880, p 12.

[18]Act of May 7, 1902, (32 Stat. L. 245-275.)

[19]Act of March 1, 1907, (34 Stat. L. 1015-1018.)

[20]Op. Cit., Land Planning Committee, p 5.

[21]Op. Cit., Report of the Commission of Indian Affairs, 1908, p 23.

in the thought that the acts offered a prerogative to the Indians, and that the Indians were being instructed of their right to either sell their lands or retain it.

While the Commissioner may have interpreted the intent of the acts, it is apparent that other methods were employed in obtaining the Indians' surrender of title to the land.

Liquor was influential in the Indians' expression, but perhaps no greater encouragement was provided than that which promised the Indian full citizenship and full freedom upon the issuance of a fee-simple title to the land. By a fee-simple patent, the land would emerge to the status of land in white ownership and the Indian allottee would be released from controls that bound him in his daily actions - that dictated his life and crushed his spirit. Moreover, the Commissioner's interpretation of the acts degenerated in the hands of the reservation agents. When the Indians hesitated in applying for fee-simple titles to the land, eager agents forced the instrument upon the Indians and forthwith sold the allotments.

A total of 246,569 allotments were made to Indians, and the total number of tracts sold was 142,122. Although all allottees did not possess the land which was desired by farmers, the best lands of the present reservations

were alienated from Indian ownership during the period 1903 to 1934. (See Diagram 1 which shows the year by year sales of allotted lands in acres.) The land productive value lost through the sale of allotted land is estimated to be more than 85 per cent of the productive value of the land of all allotted Indians, and it brought to the Indians proceeds totalling $68,671,976.[22] (Diagram 2 graphically illustrates the year by year proceeds from the sale of allotted Indian lands from 1903 to 1934, inclusive.)

Sale of allotments was accomplished by bids after extensive advertisement to interested land purchasers. The highest bidder was notified of the award and the proceeds from the sale of the allotment were turned over to the Indian allottee or the heirs. Indians who sold their allotments found themselves in possession of small fortunes, but now that their land was gone, and since they had never been schooled in business enterprise, few of them invested in anything worthwhile. For the most part, the Indians spent their monies as fast as the disbursing agents could write the checks. A certain Indian agent may have indicated the entire picture in regard to the sales of allotted land when he wrote:

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[22] Op. Cit., Land Planning Committee, p 6.

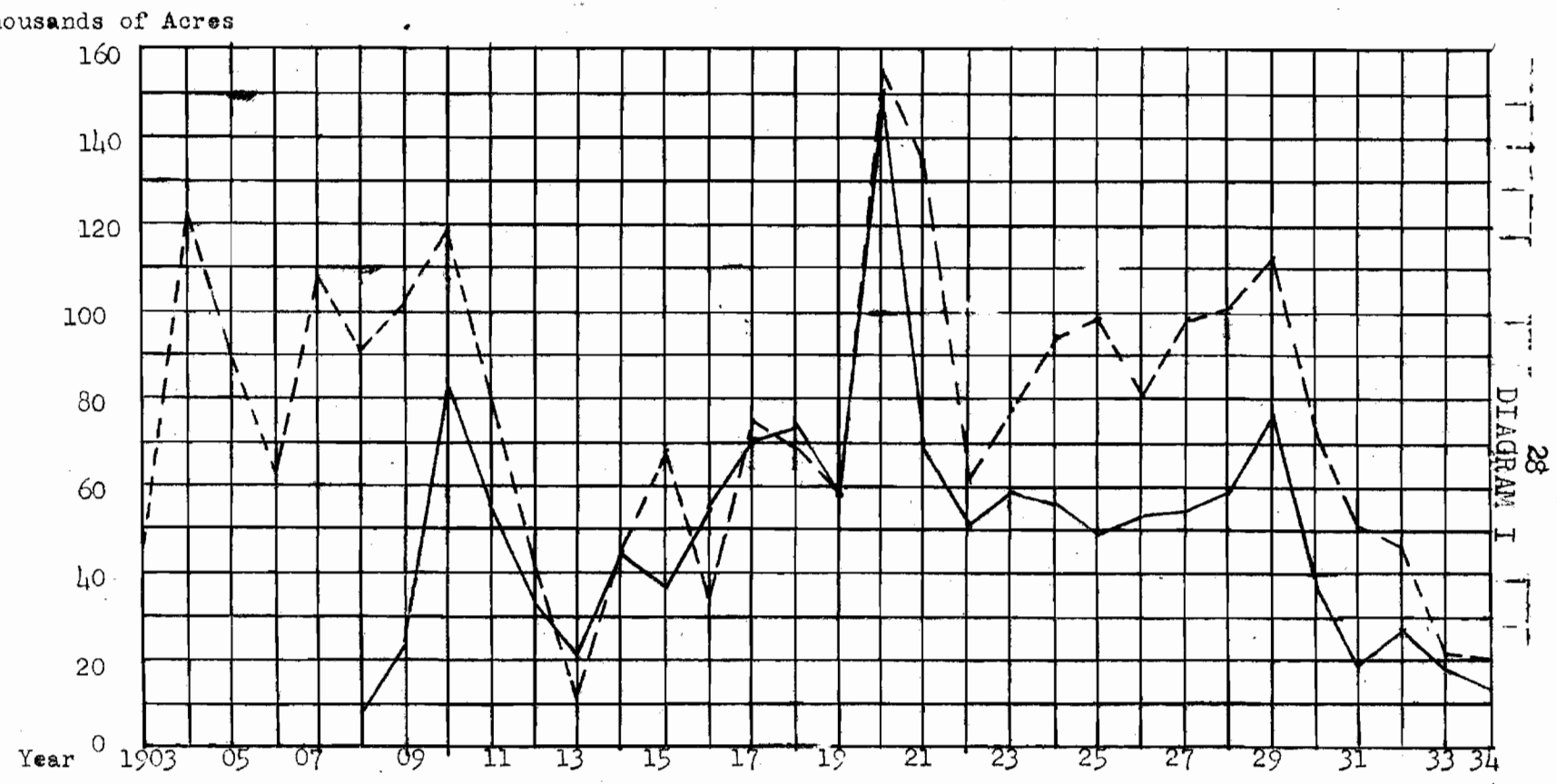

DIAGRAM I 28

Acres of Allotted Indian Lands Sold
1903 - 1934 Inclusive

--- Heirship Lands

—— Original Allotments

Source: Indian Land Tenure, Economic Status, and Population Trends, 1935

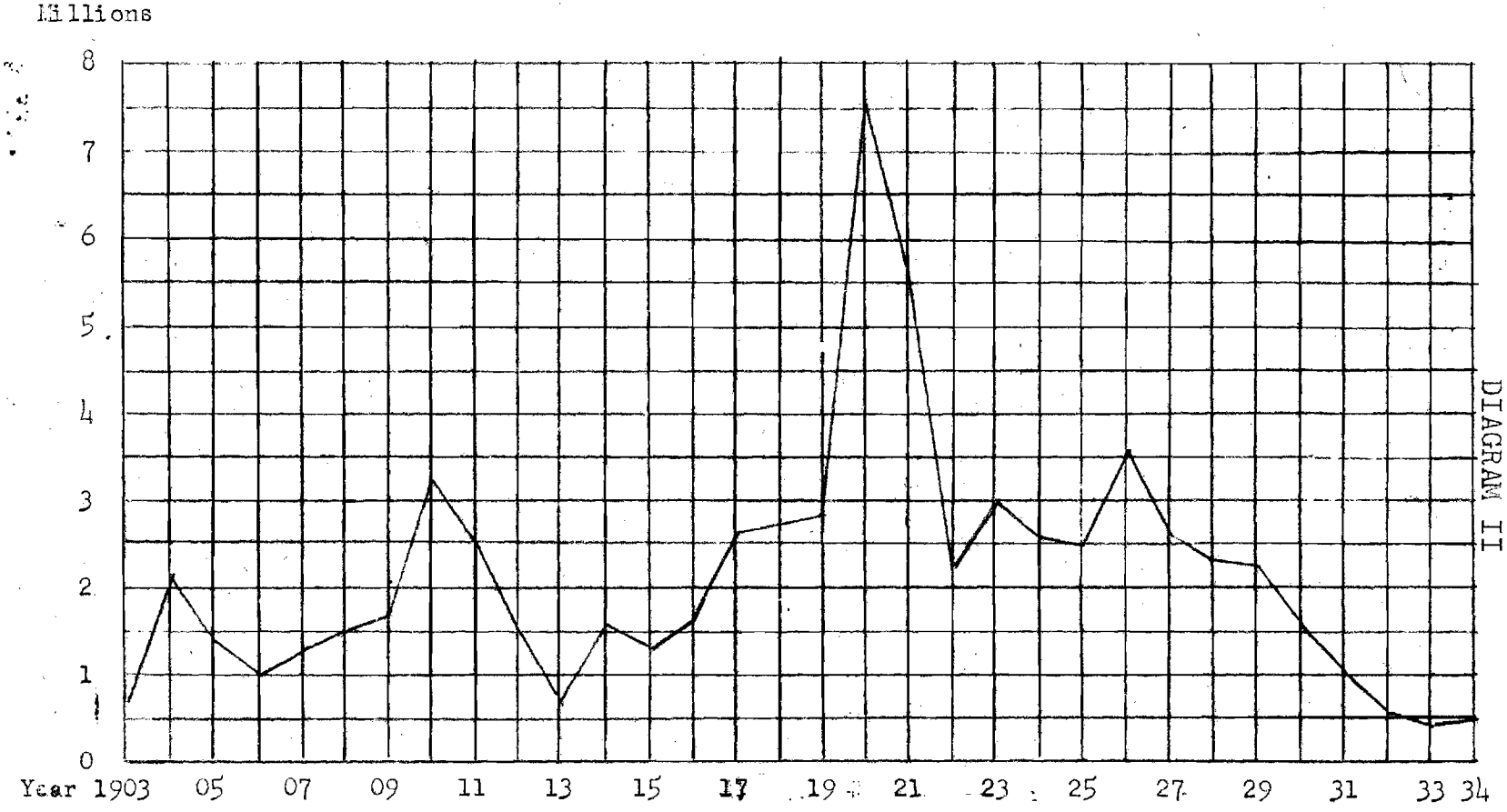

DIAGRAM II

PROCEEDS FROM THE SALE OF ALLOTTED INDIANS LANDS
1903 - 1934

Source: Indian Land Tenure, Economic Status, and Population Trends, 1935

> Since July 1, 1900, there has been sold 16,438 acres of absentee Shawnee and Potawatomi land, at $2.50 to $40.00 per acre, amounting to $110,315.98. Of this sum I feel safe in saying there is not $10,000 now in the hands (of Indians), venders, gamblers, and sallons being recipients of the greater portion of it.[23]

The result of all the general and specific laws authorizing the sale of Indian lands, both unallotted "surplus" and allotted lands, and other legislative measures which resulted in the alienation of land from Indian ownership was to reduce 130,730,190 acres officially established as reservations to a total of 43,035,734 acres, about half of which is totally unproductive. The following table indicates by classification the acreages of Indian lands lost under the operation of the General Allotment Act.

TABLE 1

INDIAN LAND SOLD AND ALIENATED

	Acres
Ceded Reservation Lands	38,299,109
Surplus opened to settlement . . .	22,694,658
Allotments alienated by sale, certificates of competency, and fee patents	23,225,472
Miscellaneous losses	3,475,217
TOTAL	87,694,456

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[23]Reports of Commissioner of Indian Affairs, 1901, p 335.

The land value of all land lost by the Indians since 1887 is estimated to be more than 80 per cent of the total value of all land belonging to Indians prior to the passing of the allotment act. At Fort Hall, practically all of the land classified as No. 1 lies in the ceded area and is in white ownership.[24] (Diagram 3 illustrates the checkerboarding of the reservation which resulted from laws authorizing the sale of allotted lands.

Furthermore, as a direct consequence of the allotment system and the sale of allotted land, it was estimated in 1934 that approximately 14,614 Indians were totally landless and in many cases homeless.[25]

Observers who have given careful thought to the allotment system unanimously concur in the opinion that the plan proved to be a dismal failure. The 14,614 individuals, outside of Federal control and reduced to the status of ash-can mendicants by narrow-thinking local governments, were the "civilized" Indians competent to manage their own affairs which the believers of rugged

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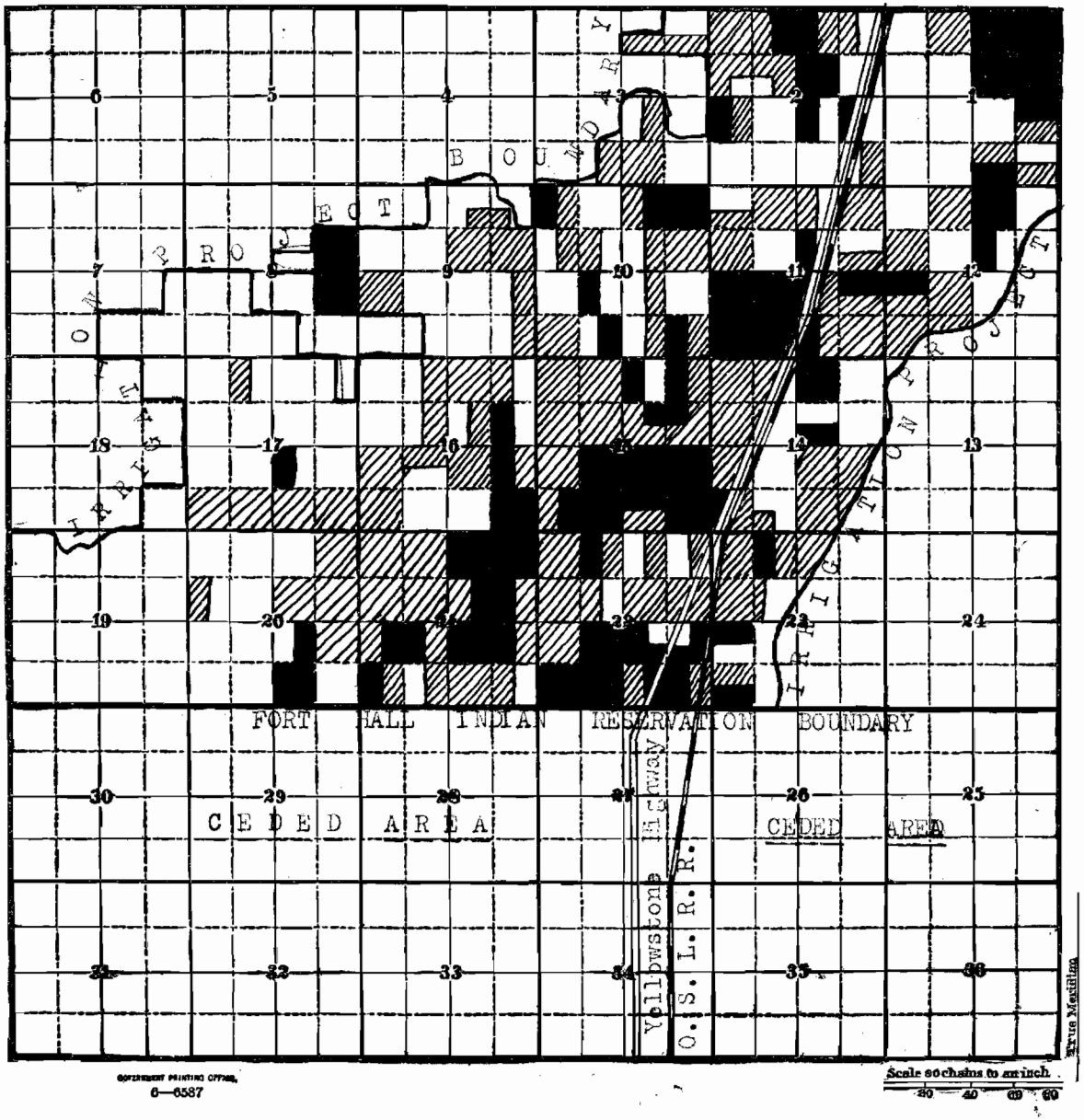
[24]Report of Conditions Found to Exist on the Fort Hall Irrigation Project of The Fort Hall Reservation, Idaho, Agricultural Economics Unit, Los Angeles, Calif., 1940, Vol. I, Map, p 125.

[25]Op. Cit., Land Planning Committee, p 12.

Township No. Five South *Range No.* 34 East Boise *Mer.*



Status of a select portion of irrigable land at the extreme southern boundary of the Fort Hall Indian Reservation

June 30, 1946

Reservation White-Owned Land

Indian-owned land leased to Whites

Indian Owned and Operated or Idle

DIAGRAM III

individualism eventually produced, and the effect of the allotment system on those original American became profound. "These Indians might well be described as a people without a country."[26]

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[26] Ibid., Land Planning Committee, p 12.

CHAPTER III

THE INDIAN REORGANIZATION ACT

The Dawes Act of 1887, the general allotment act, was the mainspring of Indian policy for almost half a century, proponents of the system resolutely firm in their convictions of its success in spite of all the painstakingly-gathered information which proved its utter failure.

During the late 1920's and the early 1930's, the thought was being advanced that the third generation of allotted Indians would be totally landless. To the proponents of allotments, this condition may have signified complete assimilation of the Indians in the white society, but it certainly could not have meant that the Indians were self-sustaining - one of the most potent arguments in favor of allotments. Those who sold their allotments dissipated the proceeds and became pauperized and propertyless members of the community. The responsibility of the Federal Government had ceased so far as they were concerned, and the state and local governments refused to have anything to do with then because they were non-taxpayers.[1] These Indians and all the piled-up

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[1]Twenty-first Report of the Board of Indian Commissioners, Government Printing Office, 1928, pp 107-109.

incidents connected with them became the basis for proving the ill effects of allotment of land in severalty.

In 1928, an independent survey of the Indians at the Uintah and Ouray Reservation, Utah, revealed that approximately 100 Indians between the ages of 25 and 30 were totally landless and without any means of income. Their economic condition was one which blackens the pages of civilization. The National Resources Board, after a thorough investigation on a nation-wide scale, in 1935, states: "As a group, the landless Indians are the most maladjusted, helpless, and poorest of the entire Indian picture, which generally is one of deep poverty."

Perhaps no sharper and yet more logical criticism of the allotment system was made than that through the words of Mr. John Collier, Executive Secretary of The American Indian Defense Association, Inc., who later became the Commissioner of Indian Affairs under President Roosevelt. Mr. Collier pointed out the cultural attack upon the Indian Heritage and indicated that while the allotment system envisioned producing self-sustaining Indians or individually-owned tracts of land, every effort seemed to be pointed toward relieving the Indians of the one asset - land - which was necessary to the Indians in becoming economically independent.

Thus by extensive investigations and sharp criticisms which showed the dire effects of the allotment system was the Dawes Act of 1887 virtually repealed by the Wheeler-Howard Act of 1934. The latter act, commonly called the Indian Reorganization Act, among other things, prohibits further alottments in severalty and extends an indefinite trust period on Indian lands.

The theory underlying the Indian Reorganization Act is that individual initiative and effort on definite tracts of land had nowhere been throttled on those reservations that had escaped individualization of land.[2] In fact, communally-owned reservations had actually advanced individual development and use of the land as well as preserved title to the land for the Indians. The classic example upon which perhaps the application of the Act of 1934 rests is the centuries-old system of land tenure and use by the United Pueblos.

Title to the land resides in the Pueblo people as a whole, but possession and use of the land is individual. An individaul is given possession of a tract of land through assignment by the tribal council subject to the restriction that the land must be operated by the individual or his family. This arrangement, for all real and

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[2]Of the 216 reservations in existence today, 118 are unallotted.

technical purposes, is individual ownership of the land so long as the assignee makes proper use of the land. Upon the death of the assignee, the land passes into the "ownership" of the members of the family, but never to outsiders. Thus, the system is built upon the family as an economic unit which is not unfamiliar in the cultural background of the Indians.

The Indian reorganization policy proceding on an arrangement similar to that of the United Pueblo system of land use and tenure concentrates on absorbing, ultimately, all reservation lands into tribal ownership. The tribal councils, established by the provisions of the 1934 legislation, may then at its discretion assign the land to individual members of the tribe. The reorganization policy reaches into the cultural history of the Indians to those times in which the land was possessed by the tribe - to the days when in the ownership of land no particular members of the tribe had a vested interest except that which may have been given them by the tribal councils. Policy under the Indian Reorganization Act seeks to restore that kind of relationship between the Indians and their greatly-shrunken land, and this it hopes to accomplish through reservation self-government.

The Indian Reorganization Act permits tribes to organize under tribal constitutions and by-laws. To be

applicable to the Indian tribes, the constitutions and by-laws must be ratified by a majority vote of the adult members of the tribe at an election in which at least 30 per cent of the eligible voters cast a ballot. Upon proper ratification of the instrument, the tribe may select, according to the provisions of the constitution, members from their own number to act as the tribal business council. The council's powers are enumberated in the consitutions.

Almost all constitutions and by-laws are identical in theoretical operation; although, they may differ slightly in exact wording, and among the provisions of the constitutions is that which covers a method by which the "ownership" of a definite tract of communally-owned land may be acquired by an individual tribal member. Specific illustration surpasses any narration, and in this example, passages from the constitution and by-laws of the Shoshone-Bannock Tribes of the Fort Hall Reservation are quoted:

> Sec. 4. Grant of "standard" assignment. - In any assignment of tribal lands which are now owned by the tribes or which hereafter may be acquired for the tribes by the United States or purchased by the tribes out of tribal funds, preference shall be given, first, to heads of families which have no allotted lands or interests in allotted lands.
>
> No member of the Shoshone-Bannock Tribes who may hereafter have the restrictions upon his land removed and whose land may thereafter be alienated shall be entitled to receive an assignment of land as a landless Indian.

The business council may, of it sees fit, charge a fee not to exceed $5, on approval of an assignment made under this section.

Assignments made under this section shall be for the primary purpose of establishing homes for landless Indians, and shall be known as standard assignments.

Sec. 4. Tenure of Standard assignments. - If any member of the tribes holding a standard assignment of land shall, for a period of 2 years, fail to use the land so assigned, or use such land for any unlawful purposes, his assignment may be cancelled by the business council, after due notice and an opportunity to be heard, and the said land may be reassigned in accordance with the provision of section 4 of this article. Upon the death of any Indian holding a standard assignment, his heirs or other individuals designated by him by will or by written request shall have a perference in reassignment of the land, provided such persons are members of the Shoshone-Bannock Tribes who would be eligible to receive a standard assignment.

The core of the standard assignment is that the assignee must make beneficial use of the assigned land in the manner agreeable to the constitution and by-laws.[3] Failure to do so, as stated in the consitutions, is an offense which may result in cancellation of the assignment. By such a requirement, individual effort on communally-owned, or in other words, tribal-owned land

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[3]The exact interpretation of two years' non-use of the assigned land is ambiguous. Whether this means that within two years after gaining possession of the land, the assignee must show results, or whether during two consecutive years, or two intermittant years, the land cannot fall into disuse has never been decided. In fact, no tribunal is existent on Indian Reservations to decide any questions arising out of tribal constitutions and by-laws, and this lack of judiciaries to decide important questions would seem to be the greatest weakness of the Indian Reorganization Act.

is advanced to the degree that individual members participate in the standard assignment; that is, those who are granted a standard assignment are required to make use of the land while any others; such as, those who have allotments or have inherited interests in allotments, would not be affected by the requirement.

Furthermore, under the provisions of the Wheeler-Howard Act, tribes are permitted to incorporate under United States' granted corporate charters. The recited purpose of corporate existence is to further the economic development of the tribes; to secure for the members of the tribes an assured economic independence; and to provide for the proper exercise by the tribes of various functions previously performed by the Office of Indian Affairs. Chartered corporations may avail themselves of the finances established through the Indian Reorganization Act and its amendments.[4]

The Act of 1934 authorized an appropriation of $10,000,000 for the Indian Credit Fund, and under the provisions of the corporate charters, tribes are entitled to borrow a corporate credit revolving fund through loan agreements approved by the Secretary of the Interior.

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[4]The Act of 1934, as amended, provides that the system of revolving credit may be extended to unorganized tribes as well as to those which have ratified corporate charters.

Loan agreements and/or promisory notes (see page 42) provide for one per cent interest on advanced funds, pledge adequate security for the loan, and detail the use to which the funds must be put. The tribe's borrowed fund may be re-loan to corporate enterprises, to cooperatives, or to individual Indians. Tribes may derive from one per cent to three per cent interest on the loans it makes; that is, the rate of interest on loans the tribe's make to individual members may be varied between one per cent and three per cent.

The theoretical operation of the revolving credit system can be shown best by illustration. Suppose an Indian tribe wishes to secure a loan to provide the financial means by which its members may pursue gainful self-occupation. The tribe makes application, technically, to the Secretary of the Interior and signs an agreement for a credit revolving fund. If the loan is approved, a portion of the total Indian Credit Fund equal to the amount of the requested loan is earmarked in the United States Treasury for use by the tribe whose loan is approved. However, the funds must be advanced from the United States Treasury. Advances mean that the disbursing agent's official checking account is credited with the amount of the advanced funds. (A standard form used to request

Form 5-808
UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE
Form approved by the Comptroller General, U. S.
Dec. 21, 1936

42

Original [yellow] for Superintendent
1st copy [salmon] for G. A. O.
2d copy [pink] for Indian Office
3d copy [blue] for Credit Agent
4th copy [white] for Corporation

PROMISSORY NOTE FOR LOANS UNDER ACT APPROVED JUNE 18, 1934 (48 Stat. 986)

$_____ _____, 19____

(Reservation) (Agency) (Post-office address) (State)

For value received _____

an Indian Chartered Corporation, promises to pay to the order of the United States at _____, in the town or city of _____

State of _____,

_____ dollars ($_____) according to the following schedule, plus a carrying charge of one (1) percent per annum payable annually from the date any funds are advanced until repaid:

Repayment of Principal		*Repayment of Principal*	
$_____	on or before _____, 19____	$_____	on or before _____, 19____
$_____	on or before _____, 19____	$_____	on or before _____, 19____
$_____	on or before _____, 19____	$_____	on or before _____, 19____
$_____	on or before _____, 19____	$_____	on or before _____, 19____
$_____	on or before _____, 19____	$_____	on or before _____, 19____

Upon the failure to pay the carrying charge or any installment when the same becomes due, or to conform to other terms of the loan agreement, then the entire indebtedness, at the option of the Secretary of the Interior, may be declared to be due and payable.

The maker of this note hereby waives presentment for payment and notice of nonpayment.

_____
(An Indian Chartered Corporation)

By _____
(Name and title)

Attest: _____

(Secretary of the Corporation)

[OVER]

9—9627

Date	Amount advanced	Carrying charge due	Amount of payment	Application of Payment		Balance of principal due
				Carrying charge	Principal	

All collections should be applied to payment of the carrying charge due before any amount is applied to reduction of the principal.

advances of fund is found on page 44.) The tribes must sign promisory notes for the amount of the advanced funds. The disbursing agent, usually the superintendent at the reservation agency, sets up an "Individual Indian Money" account in the name of the tribe.[5] The tribes, of course, may use the funds for no other than the authorized purpose, and in this illustration, it is assumed that the funds are to be re-loaned to individual members of the tribe.

A tribal member wishing a loan files an application with the superintendent of the reservation. (See page 45.) The application, if approved, effects a transfer of funds, on the agency books, from the tribe's "Individual Indian Money" revolving credit fund account to that of the borrower. The borrowed money is dibursed in accordance with the stated purpose of the individual's approved application for a loan.

Suppose, for example, that the borrower's purpose of the loan which is stated on his approved application, is to become active in the cattle industry. With the borrowed funds, a herd is bought under the very careful supervision of the superintendent or one of his subordinates.

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[5]A detailed discussion of "Individual Indian Money" appears in the cahpter titled "Leasing of Indian Lands."

Form 5-811
Approved by the Secretary of the Interior, September 28, 1936

Original (yellow) for superintendent.
First copy (white) for corporation.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE

44

REQUEST TO ADVANCE CREDIT FUNDS

To _____ Date _____
(Treasurer of corporation or bonded Government disbursing officer)

Please advance cash or issue purchase orders as shown below from corporation Credit Funds to _____

_____ according to

Commitment Order No. C. F. _____

Form of advance	*Purpose*	*Amount*
		$

Purchase orders shall be on Form No. 5-821 as approved by the Commissioner of Indian Affairs and shall include the following additional provisions (if any):

_____
(An Indian chartered corporation)

By _____
(Signature of authorized officer)

_____
(Title)

By _____
(Signature of authorized officer)

_____
(Title)

NOTE.—All advances must be made in the form of purchase orders unless the loan is fully secured.

U. S. GOVERNMENT PRINTING OFFICE 6—9535

Form 5-866C (Revised)
roved by the Commissioner of Indian Affairs
August 22, 1945

45

tract No. ----------

No. ----------

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE

APPLICATION FOR LOAN UP TO $500

Copies Required—*Loans by corporations, tribes, and credit associations.*—Original (white) for lending agency; blue for credit agent; green for borrower.*
Loans by United States.—Original (salmon) for G. A. O.; blue for credit agent; pink for Indian Office; yellow for Agency; green for borrower.

* Additional yellow copies may be required by Agency. Cherry copies may be used for any other purposes desired.

The undersigned, hereafter called I, applies to ----------
(Name of lending agency)
a loan in the amount shown in Section 1. In order to obtain the loan I agree to conform to the regulations of the Secretary of the rior and instructions of the Commissioner of Indian Affairs.

1. The funds shall be advanced on or after the dates and for the purposes set forth below. The funds shall be (*a*) advanced to me by check; (*b*) deposited to my credit in an IIM account and disbursed therefrom in the form of cash or purchase orders as the superintendent shall determine. Savings may be used as the superintendent approves, except that savings on purchases of capital goods items may be used only to repay the loan or to purchase other capital goods.

DATE	PURPOSE	AMOUNT

2. Age of applicants: Man ---------- Woman ---------- Degree of blood: Man ---------- Woman ----------
3. Number of children under 18 years of age: Boys ---------- Girls ----------
4. Location of farm ----------
5. Years of experience in agriculture ---------- Kind ----------
6. Is land operated, owned or leased? (If both, state acres of each and whether trust or nontrust) ----------
7. Income and source for past year ----------
8. ASSETS: Livestock—Kind ---------- No. ---------- $---------- Farm machinery, $---------- Other, $----------
TOTAL ASSETS: $----------
LIABILITIES: Industry among Indians, $---------- CF No. ---------- $---------- Tribal reimbursable, $----------
Other, $---------- TOTAL LIABILITIES: $----------
9. I promise to pay my debts listed in question 8 as follows: ----------
10. Security offered ----------
11. I will make payment for all advances under this application on or before the dates shown in a promissory note attached hereto, which is a part hereof. I will not assign any loan agreement resulting from this application, or any interest therein, to a third party without the consent of the Commissioner of Indian Affairs.
12. I will pay inspection fees, and fees for the preparation of this application and maintenance of the lending agency's records as follows: ----------
13. Until this loan is repaid in full, title to all property purchased with funds obtained under this application, and any increases therefrom, shall remain in the United States in trust for (the lender) (me) except as follows: (*Strike out "the lender" or "me"*) ----------

14. Until fully paid for, any buildings, fences, or fixtures built wholly or in part with funds obtained under this application shall not be a part of the land. Indian Service representatives may enter my premises at any reasonable time to make inspections of the property purchased with or given as security for the loan. All livestock and issue therefrom, and all major articles of equipment purchased with and trust property given as security for the loan shall be branded or marked as required by the regulations and instructions, and all increases from livestock given as security for the loan shall be additional security. I will report annually on the general condition of the enterprise financed by this loan. If I fail to conform to any terms of this loan, to make every honest effort to operate in a businesslike manner, or to take proper care of the property purchased with or given as security for this loan, the lending agency may, with or without recourse to legal proceedings, take any one or all of the following steps: (*a*) Declare the entire amount advanced immediately due and payable; (*b*) stop any further advance of funds under this loan; (*c*) prevent any further disbursements of credit funds under my control; (*d*) take possession of and sell any and all collateral or security; (*e*) through the superintendent, have applied on my indebtedness to the lender any of my restricted property or any trust funds to or accruing to my credit. Should the net proceeds from the sale of property and security not amount to the indebtedness outstanding, I will remain liable for the balance due.
All supporting papers, such as purchase orders, applications for release of property purchased with this loan, modifications, etc., may be signed by any one or all signers of this application. Any such papers signed by any one applicant, and approved by the superintendent, shall be binding on the other applicants. If requested by the lending agency or the superintendent, I will give crop mortgages during the time I am indebted under this application, the terms of which shall be satisfactory to them.

Signatures and addresses of witnesses:

Signatures and addresses of applicants:

Date ----------, 19----

16—89128-2

INSPECTION REPORT

THIS IS TO CERTIFY that I have inspected the asset items of the applicant. The applicant actually has possession of the asset ms listed, and the valuations placed thereon are just with the following exceptions. I believe the applicant's net worth to be ....

....
(Signature of Inspector)

te ...., 19.....

....
(Title)

RECOMMENDATION OF CREDIT COMMITTEE

The foregoing application has been investigated, and the statements therein are true to the best of our knowledge and belief, cept as follows. We recommend that the following action be taken on this application:

e .... of ....
(Body authorized to pass on loans) (Lending agency)

te ...., 19..... By ....
(Title)

REPORT OF SUPERINTENDENT

This application has been investigated and the statements therein are true and correct to the best of my knowledge and belief. rtify that the applicant is eligible for a loan from the lender; that funds therefor are available; and that the loan conforms to the ulations and instructions. The following action is taken: (If superintendent is final approving officer, this report may be omitted loans by the United States.)

te ...., 19.....

....
(Superintendent)

COMMITMENT ORDER

The attached application has been approved in accordance with the regulations and instructions, and the loan is hereby granted the sum of $..........................

LOANS BY CORPORATIONS, TRIBES, ASSOCIATIONS.—The bonded Government disbursing agent is authorized to advance the amount which the loan is approved, exclusive of $...................... for the payment in full of CF ...., and $...................... the payment of the 3 percent deposit, and $.......................... for the payment of fees, from funds on deposit in an individual ian account to the credit of the lender: (To a special II account of the borrower by field journal voucher entry) (By a check in r of the borrower) (*Strike out one*), subject to (*a*) Acceptance by the applicant of the following conditions and delivery of the inal and .... copies within .... days to the lender. (*Strike out if not applicable.*)

....
(Lending agency)

....
(Signature of authorized officer)

te ...., 19.....

....
(Title)

ACCEPTANCE BY APPLICANT

(Acceptance is required only if the Lender approved the application subject to certain conditions inserted in the commitment order)

natures and addresses of witnesses:

....

....

....

....

Signatures and addresses of applicants:

....

....

....

....

Date ...., 19.....

U. S. GOVERNMENT PRINTING OFFICE 16—89128-2

The herd increases in number and the borrower sells some of his cattle. Cattle is usually sold at public auction through Indian cattle associations. The money from the sales is deposited to the credit of the disbursing agent who sets up an "Individual Indian Money" account for the cattle association. Later, distribution of the money is made by the disbursing agent to the various seller's individual accounts, and from the proceeds of the sale, there is deducted an amount sufficient to repay the loan in accordance with the provisions of the borrower's agreement.

The money which the individual repays to the revolving credit fund is depositied into the United States Treasury to the credit of the disbursing agent's official account who maintains the "Individual Indian Money" account for the tribe, and from the moment of repayment by the individual to the tribe, the amount is available for re-loaning. This particular arrangement allows for the expansion of credit impossible under the reimbursable plan. Reimbursable loan repayments are deposited into the Treasury to the credit of the appropriations to which the monies were made and the reapid money is not available for re-loaning until it is re-appropriated by the Congress. Under the revolving credit system, the Indian tribes may use the money over and over again without Congressional

appropriation so long as it remains in the disbursing agent's official checking accoutn. The tribes must, however, repay the Government in accordance with the terms of their agreements and/or promisory notes providing for installment repayment over a number of years.

Sometimes, repayment can be made in kind. Let it be assumed that instead of returning money for the funds borrowed, the Indian has arranged to repay his loan with a proportion of the increase in the herd. The cattle with which he pays his loan - repayment cattle - can be offered to another Indian who wishes to start a cattle program through the revolving credit system. The credit system in that way becomes flexible within certain limits on the reservations. The plan of repayment cattle is not confined, however, to a reservation. It can be worked between tribes in the same way as between individuals and the tribe. Actually, the plan of repayment in kind stagnates the finances of the tribe and its members and impedes the flow of money among the tribe's members.

The following table indicates the extent to which Indians have participated in the revolving credit system:

TABLE II

LOANS UNDER REVOLVING CREDIT

Totals to June 30, 1944

Character of loan	Amount	Percent
Individual Indian loans	$4,569,285.00	63.93
Corporate Enterprises	2,057,468.00	28.79
Cooperative	520,412.00	7.28
Totals	$7,147,165.00	100.00

Source: Annual Report of Revolving Credit Operations, 1944.

In order to appreciate the expansion of the credit under the system it must be pointed out that of the $10,000,000 authorized for appropriation by Congress, the fact is that to June 30, 1944 the amount actually appropriated was $4,273,400.00. Loans have expanded to $7,147,165.00 - almost double the amount of the appropriations, and individual loans are responsible for more than half of the financial expansion of credit under the revolving credit system.

Basically, the Indian Reorganization Act and its plan undertakes to advance the economic welfare of the Indians by assuring them a permanent land basis and by providing them with the finance necessary to put the land into productive use.

CHAPTER IV

CONCLUSIONS

The allotment principle that the Indian become a self-reliant and an economically-independent citizen of the country has not been changed by the Indian Reorganization Act. The difference of thought between the advocates of allotments and the proponents of tribally-owned land is essentially the basis upon which the Indian is to attain the stature of economic independence. The allotment act held that individual effort followed individualization of land. The result was the separation of the Indian from his land and the creation of a condition in which the Indian could not become self-sustaining. The Indian Reorganization Act, on the other hand, arrests the alienation of land and guarantees the Indian a perpetual land basis upon which presumably he can build for the future.

The Allotment Act is dead; the Indian Reorganization Act lives. What about the living Indians?

Supporters of the Indian Reorganization Act have compiled facts and figures to show the tremenduous strides Indians have made since 1934. These facts and figures have been severely challenged by the enemies of the Act who have been influential enough to introduce their thought

of repealing the Act into Congress; viz., Senate Report No. 310 bold in its opinion that the Indian Reorganization Act has completely failed and has no place in the Indians' lives. It is the author's opinion that the Indians have advanced under the reorganization policy, but not to the degree which could be reasonably expected - neither in individual effort nor in the reservation government by which individual initiative is to be fostered.

The Indian Reorganization Act resolves itself into a paradox in its concern with reservation governments. On the one hand, it seeks to promote tribal governments, and, on the other, it renders the force of tribal councils ineffective by reserving to the Federal Government plenary control over Indians and their property. The Wheeler-Howard Act purports to decentralize the control of reservation affairs into the chambers of the tribal councils; but, after an extensive investigation of Indian affairs, a sub-committee of the House Indian Affairs Committee concluded, in 1944, that:

> The reservation superintendent is the virtual ruler of from hundreds to thousands of human beings most of whom are under his jurisdiction to a degree that no other people in this country come under the domination of a single individual.[1]

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[1] Op.Cit., Investigate Indian Affairs, p 345.

The quoted passage means that during the existence of the Indian Reorganization Act, no appreciable transfer of control of the reservation affairs has been made from the reservation authorities to the Indians themselves. Yet the entire plan of promoting individual enterprise on communally-owned land is based upon a clear acknowledgment of the force of recognized councils to which Indians are culturally attuned. The passage quoted means that while the act attempts to develop the kind of leadership among Indians that could foster individual effort, it discourages the Indians' voices by recognizing the single idea of the appointed superintendent over the collective thoughts of the Indians expressed by their elected tribal councils. Potential leaders among Indians today who incur the displeasures of the reservation "virtual rulers" by promoting or by trying to promote community interest and individual enterprise in opposition to the superintendent's personal desires very likely fall victim to arbitrary discriminations which have the same effect upon them as arbitrary actions had upon their forebearers during the heyday of the Allotment Act.

Secluded behind the often-times-exaggerated reports[2]

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[2]Ralph Linton, editor, "Occutluration in Seven American Indian Tribes, D. Appleton-Century Company, New York, 1940, p 90.

of the constantly-tranferring superintendents is the instability of individual economic pursuit as a direct consequence of the powerless business councils. When a superintendent is transferred to a new jurisdiction, he succeeds in changing the conomic pursuit of the individuals according to his own interest, if he has any, irrespective of, and many times without consulting the Indian councils established by the Indian Reorganization Act. A superintendent with a livestock background who is transferred to an agriculturally-productive reservation will soon have the farmers converted to livestock. This the superintendent accomplishes by encouraging livestock - his personal interest - at the expense of agriculture about which he knows nothing and in which he perhaps has no interest. Total facts and figures so meticulously prepared do not reveal that the economics of the reservations are not more stable than the constantly-transferring superintendents.[3] Nor do they reveal that many Indians have had individual effort trampled beneath the imperialistic power of a newly-transferred superintendent.

Individual initiative has likewise been choked by the quality and by the administration of finance among Indians. The old reimbursable loans were wholly

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[3]Ibid., Ralph Linton, p 89.

inadequate for worthwhile application. If any Indians attained a measure of economic independence through the financial aid of the reimbursable system, it is yet to be shown. The finance of the reimbursable system, of course, did not stop with the last of the appropriations made by Congress, and its crushing effect continues to be felt by many individual Indians who are heavily indebted. Much of the money coming into the individual Indian's account today is earmarked for repayment of the unpaid loans apparently without regard to whether or not the funds could be used beneficially elsewhere. For example, a total of $321,234.63 was collected as repayments to tribal estates during the fiscal year 1946.[4] This is a distinct deterrent to individual effort. It would seem that the Government of the United States and the tribes could greatly promote individual enterprise by cancelling all unpaid reimbursable indebtedness of the individual Indians.

The character of loans originating in Treasury monies seems to be similar to that of loans made by the government of one country to that of another. To be specific, recently, the United States Government appropriated $4,500,000,000 to the government of England for

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[4]This figure was supplied to the author by the Office of Indian Affairs in a letter dated Dec. 10, 1946.

use in the economic rehabilitation of the English people, and England thus is indebted to the United States. Some people cannot foresee that England will ever repay the United States, and others hold that the United States would be wise in forgetting the loan. In fact, there are voices among people of economic vision that the United States Government ought to loan - or give - financial assistance to all impoverished nations. The meaning of the international loans is that the United States clearly recognizes that its own economic health depends a great deal upon the well being of other nations. Loans that one nation makes to another arise as a consequence of the distribution of astronomical wealth unhealthily concentrated, and the purpose of such loans is to insure a sound economic condition for all those involved.

Indians have not lose distinct identity through being conquered, and they are considered to be separate political entities within the borders of the United States - little states under the protecting wing of the American Eagle. Monies appropriated gratuitously to these little states from the public funds become off-sets against any claims Indian tribes might have against the United States Government for breach of treaties or agreements. By the same virtue, monies appropriated on reimbursable terms obligate the little states to the United States - the same

as the loan to England obligates that nation to the United States - until repayment is made. Under such characteristics, loans to the Indians would seem to affect the total economy of the United States in the same way as the loans to England, or any other country, affects the total economy of the world. Cancellation of the reimbrusable loans originating in public funds can mean nothing more or less than approval of previous distribution of wealth within the United States to those individuals most deeply impoverished. But it has also a forceful purpose. Cancelling the reimbursable indebtedness of the individual Indians is a method of making more money immediately available to the Indians - money which they surely need and could profitably use in becoming self-supporting and economically independent.

The nature of reimbursable indebtedness originating in loans from tribal funds seems to be similar to the national debt. The individuals who obtained the loans were members of the tribe to whom the tribal funds belonged. Indians as individual members compose the entire tribe, and it is the tribe whom the members owe for the reimbursable loans. To present a parallel, during the recent war, Congress appropriated money to carry the all-out war effort to final victory. The national debt mounted rapidly, and the United States Government now finds itself indebted.

The national debt, of course, originates upon the principle of deficit spending and through the means by which the government can expand credit.

The main difference between the national debt of the United States and that of the Indians for loans originating in tribal funds is the source of the money. The United States Government creates coins and currency and expands credit; whereas, the source of the Indians' tribal funds was for the most part from the sale of "surplus" or unallotted lands. Yet it does not appear that the source of the money changes the nature of the indebtedness, and, basically, it appears that the Indians owe themselves for the reimbursable indebtedness originating in loans from tribal funds.

When any government drives its people to further impoverishment by building up the capital reserves for itself, it defeats a fundamental duty it has of helping its people secure a decent and reasonable plane of living. The financial resources of any government is recognized to have an inestimable value in the hands of individuals, and no government is stronger than its most impoverished people. Indian tribes would do well to acknowledge and completely assume its responsibility in regard to its people by cancelling the individual unpaid reimbursable loans originating in tribal funds. So long as collection

is made, the means by which the individual Indians could conceivably raise their planes of living is pumped into a tribal "vault" where it is of no avail to the individual Indians.

Successor to the reimbursable plan was the revolving credit system which is epochally significant in the financial activities of the Indians. It is an attempt - the first in the long history of the Indians - at the solution of their economic problems by sound and far-reaching financial theory, and its importance in the economic life of the Indians today can hardly be overestimated. It is virtually the only financial path along which the reservation Indians can proceed toward some measure of security. Yet the operation of the entire system in the practical affairs of the Indians is bound in Department of the Interior and Office of Indian Affairs directives, and the leash is further tightened by the failure of Congress to swell the Indian Credit Fund to the amount originally authorized.

Actually, only a little more than one-third of the amount authorized for appropriation has been made available to the Indians through the Indian Credit Fund. Loans have expanded to almost double the amount appropriated, and this would indicate that the Indians have done for themselves practically as much as Congress has done

for them. That is extremely important for it signifies the great strides the Indians have taken toward economic independence. But it is equally important to observe that the Indians have been impeded in broadening the program because the Congress has failed to appropriate the full amount authorized for appropriation. It would seem to be without logic to argue that if Congress had have made the authorized amount available, loans would have been much less than $20,000,000.00, and that amount would have presented a greatly-improved economic picture of the reservation Indians today.

With each appropriation, moreover, the Secretary of the Interior has been given the entire management of the funds. His rules and regulations explained and supplemented by voluminous Office of Indian Affairs directives, and individually interpreted by reservation authorities, determine the extent to which the revolving credit fund finds practical expression in the affairs of tribes and their members.

Final approval of all loans at the time of this writing, rests with government officials, as follows:

Approving Officer	Amount of Loan (in dollars)
Superintendent	Up to 1,500.00
District Credit Supervisor	1,500.01 - 3,000.00
Commissioner of Indian Affairs	3,000.01 - 5,000.00
Secretary of the Interior	Over 5,000.00

This means that if a potential Indian borrower sought to obtain a $6,000.00 loan, his application would have to be approved by the Secretary of the Interior. But before the application reaches the Secretary, it must pass trhough the hands of the superintendent, the district credit supervisor, and the Commissioner of Indian Affairs. That takes time, and when approval finally reaches the Indian, after a lapse of from six months to two years, it is too late to be of benefit and the potential individual has been driven to despair.

Loans up to $1,500.00 may be approved by the superintendent, and not infrequently individuals have been completely idsheartened by the lack of action by the superintendent or his authorized subordinate. A certain Fort Hall Indian, for example, made application for a $250.00 loan from the revolving credit fund. He intended to buy desperately-needed hay for his small herd of cattle which was plainly branded "I D", signifying that the herd

was trust property. After returning to the agency each day for two weeks always receiving the reply "Come back tomorrow," the Indian gave up hopes of ever getting the loan. He unhesitatingly spoke his ming about the delay, went into Balckfoot, Idaho, and within a half hour concluded negotiations with a commercial bank for a $250.00 loan. There is no logical justification for a condition of that kind, but there is a reason for its occurrence.

Final approval of the loans is the responsibility of officers who seem to base their decisions, if they make any, upon something other than the trusworthiness and reliability of the borrowing Indians. It is impossible, of course, for the rapidly-transferring superintendents or his subordinates to be entirely familiar with every individual Indian. The district credit superivisor, the Commissioner of Indian Affairs, and the Secretary of the Interior could not be expected to know every potential borrower. Yet these officers do determine definitely whether a particular Indian is to obtain a loan from the credit fund.

It would seem to be a matter of sound business for the Congress to delegate to the Indian business councils entire management of the funds the tribes borrow and promise to repay with interest. The United States in lending money to foreign countries is not so presumptious

as to send with the loan a host of "credit technicians" (as the Indian Office calls them) to bind the credit system of the borrowing country in procrastination, bureauocratic red tape, and personal sentiments of appointed officers. In loaning to foreign countries, the United States respects the financial wisdom of the borrowing countries without question.

No other officers are more equipped to determine the risk involved in making individual loans than are the elected representatives of the tribes' members. They know every member well having lived with them for years. The financial wisdom of the borrowing tribes must be respected if the recited purpose of corporate existence is ever to be realized.

Indians today exist on planes of living wholly incompatible with reservation resources and reservation production. This condition, by any reasonably analysis, is the result of the instability of the economics of the reservation traceable primarily to the existence of powerless Indian Councils - often putty in the hands of rapidly-changing local administrators whose short-lived plans rebound with depressing effect upon the living human beings. The Administrators prepare glowing reports of their activities and the results, while the Indians themselves bear the blunt of ephemeral reservation programs no more

far sighted than the administrators who are "here today - gone tomorrow." Under the impact of variable reservation programs, the Indians are driven to complete despair and discouragement; and under the force of developed and stubborn imperialism, the promising young Indians are besmirched in their attempts to bring about needed betterments.

It is recognized in the non-Indian society that short-term planning inevitably wreaks its havoc. It is conceded that perpetual organizations bend every effort to prepare long-range plans in order to promote security and stability. Presumbaly, corporate charters empower the business councils to promote the economic development of the tribes and their members; however, the land and the capital - important elements in production - are bound in voluminous Departmental and Indian Office rules, regulations, and orders, and the leash is further tightened by the totalitarians of reservations too stubborn to give ear to the voices of the Indians - too stolid in the convictions, long proven, that long-term planning by the Indians themselves would stabalize the economics of the reservations. Through Indian corporations, cooperative enterprises, and tribal cooperatives should be telescoped far-reaching plans. It will be only through stabilization of the economics of the reservations to consistently

promote economic development that the Indian people will attain the long-sought-for economic independence. Stability follows in the wake of long-term plans, but long-term plans result from perpetuity.

If the Indian people are expected to assume the responsibility for long-term planning and thus become economically independent, it is for the superior government to legitimately relignquish its control over them and their affairs. This may necessitate an institutional housecleaning within the Office of Indian Affairs to the end that local administrators blind to the validity of the statement by John Stuart Mill that "Any government by a superior individual or group fails in the most essential requirement of good government no matter how wise, vigorous and intelligent the governing authority is" may be replaced by enlightened administrators who accept the long-established principle that self-government means a rule according to the wishes of the governed themselves. It may involve Congressional assent to laws for the establishment of judiciaries at reservation levels to the end that recognition is taken of the statement by a Special Committee of the American Bar Association, in 1934, that "When judicial power is combined with executive and legislative power, a maxim fundamental to the administration of justice is disregarded."

Democracy has as its goal the development of the masses of the governed. It invisions a rising intelligence of and an active participation by the governed in the affairs of the state. It encompasses a system of independent judicial determination, according to American democracy, in matters of conflict that the excesses of democracy may be checked. It enables individuals to gain a proper perspective of the relationship of the government to the governed, and vice versa. It calls into play the wisdom of the governed that they may accept the challenge to build personalities of prestige and honor. Suppression of the free expression of democracy among Indians by appointed rulers, and the continued combination of judiciary and administrative powers can lead to no other end than perpetual mental and moral turpitude among living citizens of the United States.

The Indian Reorganization Act of June 18, 1934 most assuredly is the foundation upon which are built the human edifices of economic independence around institutions of social and cultural interdependence. But though the foundation is laid, its composition is subject to deterioration. It stands now in dire need of reinforcement. Too many years has the power of tribal governments been throttled from functioning in response to the dictates of the governed. Too long have astute imperialists made a

mockery out of the democracy presumably embraced in the Indian Reorganization Act when behind lay changes in the economics of the reservations to suit the personal interests of the imperialists.

The sights of Indian policy should now be trained upon the development of forceful Indian councils to which the most thoughtful and progressive members of the tribes will be attracted. The councils should have the complete power - and that power should in no way be abrogated - to control the financial activities and to plan the economics of the reservations.

Long-range plans chart the course to the distant future, and like the navigators of a ship put out to a distant port, perpetual Indian councils, setting the sails and orienting the bow, must reckon always dead ahead if the intended destination is ever to be reached with the least amount of confusion and the greatest amount of satisfaction.

LAND O' THE BRAVES

PART II

CHAPTER V

LEASING OF INDIAN LANDS

SYNOPSIS

The General Allotment Act apparently assumed that every allottee, irrespective of age and physical ability, could operate the land. Allotments meant that a definite tract of communally-owned land was given to each Indian whether he wanted it or not, and in twenty-five years from the date of the allotment of the land, each allotted Indian was expected to have brought the area into full productivity. The aged woman hobbling around with the aid of a crooked stick was apparently presumed to have had the required strength to clear, plow, level, seed, harrow, cultivate, and harvest whatever crops could be grown on her semi-arid allotment of land.

The believers of rugged individualism, apparently, overook the ability of the new-born baby also, for the new-born baby as well as the able-bodied individual was given an allotment of land.

The lack of vision - the erroneous assumption that the new-born baby and the grey-haired sexagenarian could farm the alloted land - which was embodied in the Dawes Act of 1887 was recognized by Congress four years after the enactment of the general legislation providing for

allotment of land in severalty, and the Act of 1887 was then amended to permit the leasing of allotted Indian lands in accordance with the rules and regulations to be prescribed by the Secretary of the Interior.

Previous to the passing of the amending bill, some thoughts had been advanced by the Commissioner of Indian Affairs that tribal-owned land should be leased out to non-Indians. He conceived a source of tribal revenue through such a system, but the friends of the Indians were suspicious of the leasing of Indian lands and repeatedly attacked the brave Commissioner who insisted that tribal land be leased even though there was no existing statutory authority to permit such use of communally-owned land. The attacks upon the Commissioner of Indian Affairs by the forceful Indian Rights Association is said to have been responsible for the former's eventual dismissal.

The bill amending the Dawes Act, as signed by the President on February 28, 1891, provided that if by reason of age or other disability, an allottee was unable to operate his allotment, the land could be leased out for a period not to exceed three years for farming and grazing, or ten years for mining purposes.

Administrators of Indian Affairs, conscious of the former Commissioner's plight, were reluctant to give their

consent to extensive leasing of allotments. The Commissioner, in 1892, specifically forbid the leasing of land which belonged to any Indian who could be regarded as physically and mentally competent to farm his land.[1] He approved only two allotment leases that year; although, it is not unreasonable to suppose that of the entire Indian population, more than two Indians were physically or mentally unqualified to operate the land.

The following year, the Commissioner issued a special set of rules which explained and limited the interpretation of the phrase "by reason of age or disability."[2] He may have forseen that some reservation authorities quickly grasped abstract terms and interpreted them to suit the particular convenience of the situation - that some of the superintendents could twist a phrase and stretch a word to enormous proportions. He may have assumed, furthermore, that to permit extensive leasing of allotted Indian land would be seized upon by the Indians' powerful friends. At any rate, he definitely set the age limits between which no lease would be permitted, and he defined the abstract term "disability" by

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[1]Report of the Commissioner of Indian Affairs, Government Printing Office, 1892, p 21.

[2]Report of the Commissioner of Indian Affairs, Government Printing Office, 1893, pp 14-17.

means of concrete examples. That year, the Commissioner of Indian Affairs approved four allotment leases.

In 1893, the Indian appropriation bill literally opened the passage-way for wide leasing by adding a new word to the conditions under which a lease was permissable. Congress stated that if by reason of "age, disability, or inability," an Indian allottee could not use the land, a lease could be negotiated for the allotment. The bewildered Commissioner frankly admitted that no clear-cut definition could be made of the word "inability." He stated, however, that it was not his policy to allow indiscriminate leasing of allotted land. Nevertheless, he reported that he had approved 294 allotment leases that year.[3]

Moreover, about this same time certain agents began advancing the thought that the leasing of allotments to non-Indians was distinctly advantageous to the allottee, particularly the aged. One such agent reported to the Commissioner of the Indian Affairs, in 1894, that: "Allotments . . . should be leased to white men, for a term of years, who should contract to improve and cultivate the same on shares . . . . ."
The reporting agent held that the leasing of the allotments.

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[3]Report of the Commissioner of Indian Affairs, Government Printing Office, 1894, p 19.

on shares would produce surplus crops for the Indian lessors; that is, more crops than the allottee could possibly consume. The surplus crops could be sold, he indicated, and the proceeds from the sale of the surplus crops could be invested in homes and other necessities. Thus, he bravely concluded, "the problem of self-support will be easily solved."

With such favorable attitudes toward the leasing of allotted lands gaining momentum year by year, the leasing of Indian allotments to non-Indians rapidly increased, and with the increase, the authority of approval of lease contracts was transferred from the Commissioner of Indian Affairs to the reservation superintendents.

But, the leasing business did not rebound to the advantage of the Indian lessors as was pre-supposed by the Indian agent quoted above. As early as 1893, the ingenuous non-Indians had formed into powerful organizations illegally gaining possession of large acreages of land at small cash rentals and subleasing the land at considerably higher rentals. The Flourney Live Stock and Real Estate Company, for example, has leased about 50,000 acres of the Omaha and Winnebago reservation lands at eight to ten cents an acre, and had neatly turned the deal to a handsome profit of approximately 900 per cent of their investments. This they accomplished by sub-leasing the land to settlers

at $1.00 to $2.00 per acre. The Indian agent observed the company's machinations, reported the incident to his superiors, and mustered an armed force to drive the land company off the reservation. Farmers opposed Government intervention for they had given notes to the land company as security for rental and the land company had discounted the notes at the local banks. The settlers felt that if the company were driven off the reservation, it would demand immediate payment of the notes. Furthermore, they argued that after the company left the reservation, they, individually, would be required to lease the land legally, and that, to them, would constitute a double payment of rent. Nevertheless, a formal suit was brought against the company, and the United States won the case after appeal to the Circuit Court.

Not all agents worked for the benefit of the Indians in the leasing of allotted or unallotted lands. Prior to the passing of the leasing legislation, it was commonly known that the Fort Belknap, Montana, Indians, had developed sizable herds of cattle. The agent of that reservation, it is said, was closely allied with a sheep company standing in need of grazing land. As long as the Indians retained their cattle, they would require all the grazing land on the reservation. Thus, the "guardian's" representative conveniently disposed of the "wards"

livestock, and recommended the approval of a lease with the sheep company for a large area of land at a very low rate of rent.

Through numerous ways, the leasing of allotted land became firmly established when, in 1900, the Commissioner of Indian Affairs observed the results. In his annual report, he wrote:

> The Indian is allotted and then allowed to turn over his land to the whites and go on his aimless way. This pernicious practice is the direct growth of vicious legislation. The first law on the subject was passed in 1891.[4]

Understandable enough is the thought that if the Indians operated the land themselves, they could become more or less self-reliant, but general criticisms of the foregoing nature assume that all allotted Indians were expressedly endowed with inate qualifications of farmers. If an individual Indian's allotment were leased while the allottee undertook professional training (and under the Indian Service educational program, it is not inconceivable to suppose that some did), he apparently was going "on his aimless way." To the administrator of Indian Affairs, it appears that the non-farming Indian was getting nowhere. The stubborn thought that the Indians must become farmers persisted and, in an effort to

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[4]Report of the Commissioner of Indian Affairs, Government Printing Office, 1900, p 32.

discourage the leasing practice, the policy was adopted which required the Indians to pay the annual operation and maintenance charges (water assessments) on all lands they leased to others. The Secretary of the Interior issued the regulation which reads:

> In all cases where a lease is made on irrigable Indian trust patent lands . . . . all . . . . irrigation charges must be paid out of lease rentals, ...

The requirement for the Indian lessors to pay the annual water assessments was more rational than logical, because, since the rent of land is a differential, it makes no difference whether the water assessments are paid by the lessors or the lessees. In either case, the rent is unaffected. The cold facts were that few Indians were farmers under a policy purposely pointed to the development of industry among Indians, but rather than attempting to remove basic causes for the lack of industry, the Congress enacted rational legislation. There were many reasons; such as, limited finance, instability of reservation programs, alienation of land by fee patents and sales, lack of competent instructions, and the mounting heirship status of land which stood in the Indians' road to economic independence. These obstacles, of course, could not have been overcome by legislation requiring the Indians to pay the annual operation and maintenance assessments.

Perhaps the greatest spur to wholesale leasing is traceable to one of the cumbersome resultants of the force of allotments in severalty - fractionated heirship. The magnitude of the heirship problem started when the first original allottee died. The allottee's personal effects were undoubtedly disposed of in accordance with Indian culture, but his allotment remained an estate to be divided among his heirs. It was not until February 6, 1901 that authority to adjudicate the cases of deceased allottees was given to the Federal Courts. By the Act of May 8, 1906, the preceding legislation was amended, and by the Act of June 25, 1910, the authority to determine heirs was given to the Secretary of the Interior. The circuit Court of the United States for the District of Oregon held, in 1910, that the Secretary of the Interior has exclusive jurisdiction to determine heirship and descent as it may affect allotted lands during the trust periods. Departmental Regulation of December 17, 1943, delegates probate authority to the Commissioner of Indian Affairs, the person specifically appointed to collect pertinent information, to conduct hearings, and to render decisions regarding the heirship of land is the examiner of inheritance.

When an Indian dies leaving heirs to whom the ownership of his land is to be transferred, the vested

Original Allottee	5998	33813-32	33452-32	35675-32	4[illegible]-35	30043-37	22844-38	43090-39	14344-44	Present Heirs
J. Tapoof	T. Wopsock									T. Wopsock 216
	F. Nick		C. Tanner							C. Tanner, Ext. 216
	Quamuck				E. Starr					E. Starr 96
	H. Appawoo									H. Appawoo 180
	E. Pike, Jr.	G. Root					O. Arrep			O. Arrep 9
							M. Wash			M. Wash 9
							R. Wash			R. Wash 9
							V. Wash			V. Wash 9
							A. Wash			A. Wash 9
		N. Loupe					N. Loupe			N. Loupe 81
		K. Loupe					R. Loupe	E. Loupe		E. Loupe 81
	Tavigah									
		J. Loupe					J. Loupe	J. Loupe		J. Loupe 81
	G. Machita	E. Nero			S. Nero			B. Nero		B. Nero 141
		K. Machita					M. Nero	M. Nero		M. Nero 90
		Maud Nero			Maud Nero					
							M. Modoc			M. Modoc Ext. 24
	Seketa							Seketa		Seketa 288

DIAGRAM IV

DESCENT AND HEIRSHIP OF UNCOMPAHGRE ALLOTMENT NO. 576 ON THE UINTAH AND OURAY RESERVATION, UTAH - MARCH 1, 1946

Heirs to whom interests in the allotment of land descended are shown under each of nine numbered probates, then interests are collected and shown under the heading "Present Heirs". The smallest common denominator for the fractions representing heirs' interests is 1,512, and the numerators for the fractions are shown in the lower right-hand corner of each heir's block. There are two unprobated estates.

interest of each heir is expressed in a ratio of the total. Suppose, for example, that an original allottee passes away leaving two heirs. The examiner of inheritance would determine that each heir is entitled to one-half interest in the allotment. In other words, he would determine equal division between the two heirs of the original allottee. If the two heirs die leaving, say, six children each, the examiner would determine equal division among all living heirs. That would mean that each heir of the second generation would have an interest in the allotment expressed as one-sixth of one-half or one-twelfth of the allotment. The procedure goes endlessly on from heirs to heirs through generation after generation. Table 3 shows the heirship status of Fort Hall Allotment No. 1795 as of January 1, 1946.

Most of the allotted land in Indian ownership today is deeply bedded in the quicksand of probate after probate, and the thought is being advanced that the next generation of Indians will have only inherited lands. Of the 1,375 allotments made at the Uintah and Ouray Reservation, it is estimated that more than four-fifths of them are in a complicated heirship status today. (See Diagram 4.) At Fort Hall, Idaho, roughly seventy per cent of the allotments are owned by more than one individual. Considering all reservations, fractions which represent

the division of Indian allotments have reached the proportions of 1/2056, 215/187,479, and even such fractions as 20790/187110. Some of the Indian land has hundreds of heirs, and some of the heirs have interests in tens of allotments. The effect of fractionated heirship is to render the allotments into bit economic units impractical for any heir to operate. Thus, the land is leased to non-Indians by the local superintendents acting usually under power of attorney for the heirs.

The result of fractions on the heirs' income from leased land is that at each new generation, the heirs' income becomes gradually smaller. As an example, consider the original allottee above illustrated, and suppose his land were leased out for a net rent of $100. As long as the original allottee lived, the $100.00 would be turned over to him alone. When he died, leaving six children each, the $100.00 would be distributed to the twelve heirs so that each would receive $8.33. The full impact of gradually-reducing incomes is felt by those heirs who today receive as little as one or two cents a year from inherited interests in an allotment. Table 4 shows the results of fractionated heirship on the heirs' income from leased Fort Hall Allotment Number 1449.

Over the years during which leasing has developed, modifications have been made in the Secretarial rules and

TABLE 3

FORT HALL ALLOTMENT NO. 1795

Heirship Status and Equivalent Acre Interest

January 1, 1946

Heir	Fraction	Equivalent Acre Interest
Pavohroo	1/2	10.00
Jefferson Schank	1/6	3.33
Jessie Pocatello	1/6	3.33
Percy Timsanico	1/18	1.11
Helen Chicken	1/90	.22
Mary Chicken	1/90	.22
Lena Timsanico	1/90	.22
Ida Timsanico	1/90	.22
Mabel Timsanico	1/90	.22
Theodore Timsanico	1/90	.22
Mildred Timsanico	1/90	.22
Edison Timsanico	1/90	.22
Frances Timsanico	1/90	.22
Al Timsanico	1/90	.22

The effect of fractionated heirship is to render a tract of land into parcels too small for any of the heirs to operate successfully. The table shows that the inherited interest in the land of ten of the heirs is equivalent to .22 acres. The one heir whose one-half interest in the allotment is equivalent to 10 acres is 71 years old - physically incapable of working the land.

TABLE 4

FORT HALL ALLOTMENT NO. 1449

Rented at one-half cent per acre

Heir	Fraction	Lessor's fees	Heirs net Share of Rent
Thomas LaVatta, Jr.	1/2	.25	$4.75
Pahvondoah Penn	1/4	.25	2.25
Annie Flossie Drink	1/14	.25	.46
Eddie Drink	1/14	.25	.47
Annie Drink	1/16	.25	.38
Dewey Sawyer	1/112	.09	----
Marion Sawyer	1/112	.09	----
Carrie McGill	1/112	.09	----
Harry McGill	1/112	.09	----
Jonah McGill	1/112	.08	----

There are ten living heirs of Allottee No. 1449. Each heir's interest is represtned by a fraction. The 20-acre allotment was leased for $10.00 during the year 1946. Each heir was assessed the fee which operated to absorb some of the administrative cost of leasing. The table shows that after the lessor's fees had been deducted, in five cases, the heirs received no income from the land.

regulations, and presumably the existing rules and regulations eliminate some of the previous corrupt practices in regard to the leasing of Indian lands. No employee of the Government, for example, is allowed to have any interest in a lease for Indian lands, and no lessee is permitted to sublease land. A lessee may, with the approval of the Superintendent and the lessors, make an assignment of his lease to another lessee. In 1942, the Secretary of the Interior amended his regulations to the end that the lessees are required t o pay the assessments for operation and maintenance in addition to the annual rental. Furthermore, under existing rules, authority is given to the Superintendents to approve farming and grazing leases, and allottees, deemed by the Superintendents to have the business capacity, may negotiate their own leases and collect the rentals. Generally, however, the leasing business is handled by the local Indian agencies.

In the fall of the year, the agency lease clerk determines which allotments will be available for lease, and according to the rules of the Secretary of the Interior, he prepares a list showing the number of the allotments, the land descriptions, the names of the allottees, the irrigable acreages, and the gross acreages of the allotments, and is, presumably, expected to show a minimum

acceptable rental value. The prepared list is given wide circulation among prospective lessees who are invited to turn in sealed bids which are to be opened on a certain date. According to the Secretarial rules and regulations, the highest bidder is awarded the use of the land; provided, that the previous lessee does not meet the high bid, and, provided further, that Indians are given first preference to the land. A lease contract which is secured by bondsmen is drawn up between the lessee and the lessors and approved by the Superintendent.

To be specific, assume that Ed Smith has received a list which shows all Indian land allotments which will be available for lease. Mr. Smith considers allotment number 249 to be productive, so he goes to the local agency and asks for an application for a lease, (see page 81,) or he may have received an application with the invitation to bid. Mr. Smith is required to fill in all necessary information on the lease application - information such as the allotment number, his own name and address, the land description, improvements to be made, and other pertinent information called for on the application. Mr. Smith, then, returns the application to the agency in a sealed envelope and the application has his bid price indicated thereon. On the date set aside, the bid is opened, along with all the other bids which have

5-180 f
(May 1931)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of Indian Affairs
Field Service

APPROVAL NOTICE

.....

.....

Sir:

This is to advise you that your application for lease has been APPROVED on the following-described land: .....

.....

The lease contract will be drawn within the regular course of business, and you will be notified when and where to appear to sign the lease contract and make bond.

Officer in Charge.

5-180
(August 1943)

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

82

Lease No. _____

_____ Indian Agency Contract No. _____

WRITE ALL NAMES IN FULL AND BE SURE TO GIVE CORRECT AND FULL POST-OFFICE ADDRESSES

LEASE

_____
(Farming, Farming and Grazing, or Farm-Pasture[1])

Tribe _____ Allotment No. _____

THIS CONTRACT, in quadruplicate, made and entered into this _____ day of _____, 19____, by and between the Indian or Indians named below (the Superintendent of the Indian Agency acting for and on behalf of Indians non compos mentis, minors, undetermined heirs, and nonresidents whose whereabouts are unknown), hereinafter called the "lessor,"

ACCT. No.	LESSORS	YEAR BORN	SEX	SHARE	T. B. PAGE	AMOUNT
					TOTAL,	

and _____

of _____, State of _____, Rural Route No. _____, hereinafter called the "lessee," under and in accordance with the provisions of existing law and the regulations prescribed by the Secretary of the Interior relative to Farming and Grazing leases on restricted Indian lands, WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided for, the lessor doth hereby let and lease unto the lessee the land and premises described as follows, to wit: _____

_____

of Sec. _____, Twp. _____, R. _____ West, containing _____ acres, more or less, of which not to exceed _____ acres may be cultivated, for the term of _____ years, beginning on the first day of _____, 19____, fully to be completed and ended on the _____ day of _____, 19____, subject to the conditions hereinafter set forth. The lessee, in consideration of the foregoing, covenants and agrees to pay to the officer in charge of the Indian Agency $_____ per annum for the use and benefit of the lessor, as rental for the land and premises, said sum to be paid in semiannual payments as stated below. If this lease covers land within an irrigation project, the lessee is also obligated to pay in addition to the rental the irrigation charges as provided for in section 6, in accordance with the leasing regulations (Title 25—Indians, CFR, Part 171, as amended).

DATE DUE	AMOUNT	IMPROVEMENTS (*See next page for specifications*)

Amount of Bond $_____ Lease Fee $_____

I. INTEREST.—It is understood and agreed between the parties hereto that if any installment of rental is not paid within 30 days after becoming due that interest at the rate of 6 percent per annum will become due and payable from date rental became due and will run until said rental is paid.

[1] Do not use this form when grazing lands are permitted pursuant to Title 25—Indians, CFR, Part 71.

16—30714-2

2. **IMPROVEMENTS TO BE PLACED.**—It is expressly understood and agreed that the lessee will, at his own expense, within _____ from the beginning of this lease, build, construct, and erect the following improvements upon the above-described land:

_____

_____

_____

_____

_____

_____

_____

_____

_____

all of which are to be constructed in a substantial and workmanlike manner and of durable material within the time limit specified above, or he shall be liable for the full value thereof, with a 15 percent penalty additional for improvements not made as above set forth. The Superintendent or other officer in charge of the Indian Agency and the lessor reserve the right to go upon the land at such reasonable times as may be desired to examine the condition of the land and improvements thereon.

3. **IMPROVEMENTS WHICH MAY BE REMOVED.**—It is further agreed that the lessee may place the following improvements on the land covered by this lease and remove same within 30 days after the termination of his occupancy: *Provided*, That he may not attach such improvements to any improvements already on the land or to permanent improvements to be hereafter constructed in such a way that the removal thereof would in any way damage the improvements which must be left on the land. _____

_____

_____

4. **IMPROVEMENTS WHICH MAY NOT BE REMOVED.**—It is further understood and agreed that any and all improvements placed upon the leased premises not stipulated in this lease contract are to remain thereon at the expiration of the lease term and become the property of the lessor.

5. **INSURANCE.**—It is further understood and agreed that the lessee is[3] _____ to insure buildings now on the leased premises or hereafter placed thereon which are in physical condition to insure, against loss by fire, lightning, windstorm, and tornadoes in the full insurance value thereof, for the use and benefit of the lessor, in a company acceptable to the officer in charge of the Agency, and will keep such insurance in force during the full term of this lease; the insurance money, in the event of loss, to be paid to the said officer in charge for the use and benefit of the lessor: *Provided, however*, That the lessee may rebuild the improvements within 90 days after the loss to the satisfaction and acceptance of said officer in charge, and in such case receive the insurance money in reimbursement of the expense incurred. The option of the lessee so to rebuild must be declared to said officer in charge within 30 days after the date of the loss; in the event that the lessee does not exercise the option hereunder, it is agreed that said improvements may be rebuilt therewith in the discretion of the said officer in charge. In event the buildings are in physical condition to insure but on account of their not being occupied no insurance company will write a policy, it is understood and agreed that the lessee is to be responsible to the said officer in charge for the full value thereof, and that in event of loss he will pay to the said officer in charge the full amount of the damages, for the use and benefit of the lessor: *Provided*, That said lessee may rebuild or repair the destroyed or damaged buildings under the same conditions as hereinbefore provided for destroyed or damaged buildings which had been insured. It is further understood and agreed that the lessee must within 15 days after the beginning of this lease file with the officer in charge of the Agency a proper insurance policy or a statement by some reputable insurance agent that the buildings are not in physical condition to insure; and it is further understood and agreed that the failure of the lessee to file said policy or statement will forever bar him from claiming that the buildings are not in physical condition to insure and will render him liable to the said officer in charge, for the use and benefit of the lessor, for the full amount of any loss, of or to said buildings. It is further understood that in the event of the loss or damage of any buildings which have not been insured and for which the lessee has not filed the above indicated statement that said buildings were not in physical condition to insure, the officer in charge of the Indian Agency is to appraise the amount of the loss and his appraisal is to be accepted as the true amount of the damage which the lessee is to pay. Where the word "not" is inserted in the first line of this paragraph this clause does not apply.

6. **OPERATION AND MAINTENANCE.**—It is understood and agreed that the lessee will pay all operation and maintenance assessments annually in advance on the due date preceding each irrigation season, including any penalties, accruing against the above-described land under irrigation, pursuant to the existing or future orders of the Secretary of the Interior (Title 25—Indians, CFR, part 130).

7. **REPAIRS AND MAINTENANCE.**—It is understood and agreed that the lessee is to keep the premises covered by this lease in good repair, and the said lessee will be responsible for all damages done to buildings and fences and other improvements, except the usual wear and decay; to clean out old ditches and construct such new ditches and laterals as may be necessary for the economical use of water appurtenant to the land, and keep such ditches and laterals free from willows, shrubbery, and wild grasses; to repair and keep in order all head gates, checks, drops, culverts, dams, flumes, and other structures necessary and maintained for the conveyance and control of water; to make beneficial use of all water appurtenant to said land, and to guard against excessive use of water or the swamping of said land through leakage or seepage, as provided by irrigation regulations (Title 25—Indians, CFR, Subchapter L).

8. **MANNER OF CULTIVATION, NOXIOUS WEEDS, JOHNSON GRASS, ETC.**—It is understood and agreed that the lessee is to cultivate, improve, and farm the lands covered by this lease in a husbandlike manner to the best advantage; that he is to commit no waste thereon; that he is to keep said lands free from noxious weeds; and that he is to keep down all Johnson grass that may appear on the leased premises during the term of this lease and to use diligence in an effort to destroy same.

9. **CROP LEASES.**—It is understood and agreed that the lessee will not purchase or be a party to the purchase by anyone, of the lessor's share of the crop, prior to its delivery as herein provided, and that should he purchase the crops after that time, he will pay the regular commercial price in effect on date of such purchase; that the lessor will not mortgage or otherwise encumber or dispose of his share of the crop prior to its delivery by the lessee as hereinbefore provided for; and that the lessee will harvest crops as soon as possible after maturity in order that the lessor may pasture the land or sow it to wheat. It is further understood and agreed that a strictly crop lease gives the lessee no rights whatsoever in or to any land not cultivated; in or to any pasture on the land; building on the premises; unless specifically stated.

It is further agreed and understood that the shares in a crop rental shall be as follows: One-fourth of cotton, when hand picked, one-third for snapped picked cotton, and two-fifths for sledded cotton, for the lessor's share. All cotton to be delivered at the gin, and money representing the lessor's part to be paid to the disbursing officer. If the lessor, or lessors, fail to receive the lessor's part of grain at the threshing machine, the lessee may market such grain and have a fair allowance for hauling such grain from the machine to market, all weights and bills to be presented to the farmer or agency office for final settlement. This division of crops and the handling of same shall govern unless otherwise specified in paragraph No. 2.

10. **STALK FIELDS.**—It is understood and agreed that stalk fields upon the leased premises shall not be sold unless the same will be consumed without injury to the land and prior to the expiration of this lease; and that no cattle or other stock are to be placed upon the stalk fields in wet weather and that the lessee and his sureties shall be liable to the United States for the use and benefit of the lessor, for any and all damages resulting to the land in violation of this provision of the lease contract. (This paragraph does not apply to ordinary crop leases as, under paragraph 9 above, the lessee has no rights to such stalk fields.)

11. **OVERPASTURING—STOCK LAWS—FERTILIZERS.**—It is understood and agreed that the lessee will not pasture on the leased premises a number of cattle or other livestock in excess of the carrying capacity of the lands as determined by the Superintendent or his duly authorized representative and agrees to make promptly such reductions in the number of animals grazed as necessary to prevent overgrazing, soil erosion, or other injury to the land or crops at any time during the term of the lease upon written notice by the Superintendent or his duly authorized representative; that he will observe all quarantine and other stock laws and regulations now in force or hereafter promulgated by the United States or the State authorities; and that all manure and other fertilizer which may be produced upon the leased premises shall be the property of the lessor and shall be distributed upon the leased land.

[3] If the buildings are not to be insured, insert the word "not" in paragraph 5 after the word "is" in the first line.

12. **TERRACING.**—It is understood and agreed that the lessee will terrace and keep up the terrace on _____ acres of land covered by this lease at an estimated cost of $_____; and it is further understood and agreed that the lessee shall do the terracing in accordance with the methods used by the State Agricultural College of the State in which the land covered by this lease is located.

13. **SUBLEASING—ILLEGAL ASSIGNMENTS—TRANSFERS.**—It is understood and agreed that any sublease, assignment, or transfer of this lease or of any interest therein can lawfully be made only with the consent of the lessor in writing and the approval of the representative of the United States Government by whom this lease is approved, or his successor in office, and that any assignment, sublease, or transfer made or attempted without such consent and approval shall be void and render this contract subject to cancellation by such officer. It is further understood and agreed that the lessee hereto will be guilty of unlawful subleasing if he contracts, without the consent of the lessor, and the approval of the officer in charge of the Indian Agency, in writing, with any other person or persons to farm or use the premises, or any part thereof, on any other basis than the payment by said lessee of so much money per hour, per day, per week, per month, or per job. It is further understood and agreed that all share cropping or re-leasing for cash, all or any part of the premises, by the lessee herein, without the consent in writing of the lessor and the written approval of the officer in charge of the Indian Agency, except as provided in paragraph numbered 9, hereinbefore, is unlawful subleasing and renders this lease subject to cancellation by said officer in charge of the Indian Agency.

14. **TIMBER.**—It is understood and agreed by and between the parties hereto that the lessee herein may utilize as firewood, for his own use only, such dead and down timber as there may be on the leased premises which is not required by the lessor for his own, individual use; that no green timber may be cut by either the lessor or lessee without written consent of the officer in charge of the Indian agency, except that the lessee may cut posts for repairing fences on the leased premises only.

15. **POSTS.**—Where a cash consideration is allowed for posts, it is understood and agreed that metal, yellow pine, bois d'arc, post oak, or white oak posts are to be furnished unless otherwise stipulated in paragraph No. 2. The kind of posts to be furnished is to be stated in the blank space in paragraph No. 2 and if it be either of the five kinds named in this paragraph, the specifications are to be as follows: Metal posts must be steel line posts, 5 feet in height, weight not less than 3½ pounds finished with a heavy coat of special steel paint, to be set in the ground two feet and no more than 20 feet apart, corner and gate posts well braced, must be not less than 7½ feet in length, weight not less than 20 pounds, gauge No. 8, and must be set in the ground 3½ feet. Bois d'arc No. 1 select, white oak No. 1 select, post oak No. 1 select or Southern yellow pine to be 6 to 6½ feet in length and 4 to 5 inches in diameter at the top, placed not less than 2 feet in the ground, set in a true line well tamped, not farther than 20 feet apart, corner and gate posts are to be 8 feet in length, not less than 8 inches in diameter at the top, placed 3½ feet in the ground, fence to be well braced at the corners and gates. The Southern yellow pine posts must be pressure treated with No. 1 grade English creosote oil. (Where a money consideration is allowed, and where other than either of the five kinds of posts named in this paragraph are agreed upon, such posts must be stipulated in writing in paragraph No. 2 with special specifications required to fulfill the contract.)

16. **NUTS AND FRUITS.**—It is understood and agreed that the lessor reserves all uncultivated nuts such as pecans, walnuts, etc., berries and other wild fruits, except a reasonable amount for the personal use of the lessee and his immediate family unless otherwise provided in the lease.

17. **BUSINESS LEASES.**—It is understood and agreed that the lessor reserves the right to make a business lease on the premises covered by this lease and that in event such a lease is made, the lessee hereunder shall be entitled to actual damages sustained by him on account of said business lease, and to nothing more. It is further understood that in the event a dispute between the lessee hereunder and the lessee under the business lease as to the amount of such actual damages the matter will be referred to the officer in charge of the Indian Agency, who shall be the sole and final judge as to the amount of the said damages.

18. **INTRODUCTION AND MANUFACTURE OF INTOXICANTS—UNLAWFUL CONDUCT.**—It is understood and agreed that the lessee will not use or permit the premises covered by this lease to be used for any unlawful conduct or purpose whatsoever; that he will not use or permit the use of the leased premises, or any part thereof, for the manufacture, sale, gift, or storage of any intoxicating liquors or beverages and that he will not permit the introduction of same into or upon the leased premises; and, that any violation of this provision by the lessee, or with his knowledge, shall render this lease subject to cancellation by the officer in charge of the Indian reservation.

19. **DELINQUENCIES.**—It is understood and agreed that if the lessee hereto shall fail to pay the rents and all other obligations hereunder when due, or to construct or place the improvements on said land as contracted for and in the manner herein provided, or shall fail to comply with or shall violate any of the provisions of this contract, the officer in charge of the Indian reservation may declare the lease forfeited by giving notice in accordance with the regulations (Title 25—Indians, CFR, Part 171), and may thereupon take such action to repossess the premises and such other action as may be necessary to protect the interests of the lessor as provided for by the regulations (Title 25—Indians, CFR, Part 171), which by reference are made a part of this lease, but such forfeiture shall not release the lessee from paying all rents and other obligations contracted for or from damages for such failure or violation; and it is further understood and agreed that there shall be a lien upon all crops grown or raised upon the leased premises, and all implements, livestock, or other property of the lessee on the premises, which shall be in conformity with the regulations (Title 25—Indians, CFR, Part 171), as a security for the payment of the rents and other obligations and the making of the improvements provided for herein.

_____

_____

_____

_____

_____

_____

20. **DELIVERY OF PREMISES.**—It is understood and agreed that at the expiration of the time mentioned in this lease the lessee shall peaceably and without legal process, deliver up the possession of the premises herein described in as good condition as they now are, usual wear and unavoidable accidents excepted.

21. **UPON WHOM BINDING.**—It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, executors, and administrators of the parties to this lease.

22. **MUST BE APPROVED.**—It is understood and agreed that this lease shall be valid and binding only after approval by the officer in charge of the Indian Agency.

23. **SURRENDER CLAUSE PERMITTING SEEDING FALL SMALL GRAIN.**—It is understood and agreed that the lessee will surrender, without pay, the stubble land and other land in suitable condition on which he has no growing crop, to be seeded to fall grain or alfalfa 5 months prior to the expiration of the lease, when the lease expires at the close of the calendar year; or, prior to the expiration of the year when the lease expires on or before April 1 of the following calendar year.

24. **INTEREST OF MEMBER OF CONGRESS.**—No Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the lessee (and lessor) has (have) hereunto affixed his (their) hand(s) and seal(s), the day and year first above written (and the lessor hereunto has caused to be attached his legal acceptance on which he has affixed his hand and seal).

Two witnesses to each signature:

_____

P. O. _____ _____ *Lessee.*

_____

P. O. _____ _____ *Lessee.*

_____

P. O. _____ _____ *Lessor.*

_____

P. O. _____ _____ *Lessor.*

STATE OF _____, COUNTY OF _____, ss:

I, (or we) _____ lessees herein, being first duly sworn, depose and say that I (or we) are leasing the lands herein described for my (or our) own use and benefit, and not, either directly or indirectly, for the use or benefit of any other person or corporation; that I (or we) have no agreement, arrangement, or understanding with any person, persons, or corporation whereby said lands or any part thereof shall or may be used, enjoyed or occupied by or for the benefit of any person, persons, or corporation other than myself (or ourselves); and that I (or we) have not paid and will not pay any monetary or other consideration, directly or indirectly, to the lessor for the use of the property herein described, except as specifically provided for by the terms hereof.

I (or we) hereby acknowledge the signing and sealing of this lease to be my (or our) free act and deed.

_____

_____

Subscribed and sworn to before me at _____ this _____ day of _____, 19____

[SEAL]

My commission expires _____ _____

Notary Public.

BOND

In consideration of the letting of the premises described in the foregoing indenture of lease, and of the sum of $1 to each of us in hand paid, the receipt whereof is hereby acknowledged, we, the undersigned, _____

of Rural Route No. _____, _____ County, _____

and _____, of Rural Route No. _____, _____

County, _____, hereby become sureties for the punctual payment of all rents and performance of all the covenants and agreements in the above indenture of lease, to be paid and performed by _____ the lessee named therein, and if any default shall be made therein we do hereby promise and agree to pay on demand unto the above-named officer such sum or sums of money as will be sufficient to make up such deficiency, with a 15 percent penalty additional for improvements not made, and fully satisfy all the conditions, covenants, and agreements contained in said indenture of lease without requiring any notice of nonpayment or proof of demand being made. It is agreed that this bond shall be liable for material furnished under the contract provided such material is of the kind and quality called for under this contract. And we do hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed and sealed this _____ day of _____, 19____

Witnesses:

_____ _____ [SEAL]

_____ _____ [SEAL]

(Write names in full)

VERIFICATION OF SURETIES

STATE OF _____, COUNTY OF _____, ss:

_____ and _____, the sureties to the foregoing indenture of lease, being duly sworn and severally examined by me, state that they signed the foregoing obligations as the sureties for the lessee under the annexed lease, and that they and each of them, respectively, own and possess property over and above all debts, liabilities, and legal exemptions of the value and worth the sum placed opposite their names.

_____ $_____

_____ $_____

(Write names in full)

Subscribed and sworn to before me, at _____, this _____, day of _____, 19____

[SEAL]

My commission expires _____ _____

Notary Public.

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,

_____, 19____

The within lease is hereby approved and declared to be made in accordance with the law and the rules and regulations prescribed by the Secretary of the Interior thereunder, and now in force.

_____

United States Indian Superintendent.

U. S. GOVERNMENT PRINTING OFFICE 16—30714-2

APPLICATION TO LEASE

Allotment No. _____
No. of acres _____
Acres Irrig. _____

Name of Applicant _____

P.O. Address _____ Date _____

I hereby make application to lease the _____

_____

of Sec. _____, Twp. _____ S, Range _____ E, Boise Meridian, Idaho, allotment of _____ for farming, grazing, or farming and grazing purposes for a term of _____ years, beginning on the first day of _____ 19___, for which I agree to pay $_____ rental each year on January 1, and in addition thereto I agree to pay the amount of the current Irrigation operation and maintenance assessment each year on April 1. The Irrigation O. & M. assessment is fixed by the Secretary of the Interior and is subject to increase or decrease.

I agree to repair and maintain the fences, handle the place in a workmanlike manner, and cooperate with the officials of the Fort Hall Indian Agency and other Government agencies on programs such as ACA, weed control, and soil conservation.

I agree to make the following improvements within the first three years, one-third to be completed each year. (Itemize fully, including estimated cost).

_____

_____

_____

_____

_____

_____

_____

_____

_____

I also desire to place on the land, with the privilege of removing at expiration of my lease, the following permanent improvements: _____

_____

_____

I agree to keep _____ acres in a good stand of alfalfa or approved alfalfa-grass mixture during the term of the lease.

(Over)

The following improvements are now located on the land: (List buildings, rods of fence, condition and value of such improvements.)

_____

_____

_____

I further agree to leave all improvements which belong to the land in good repair at the expiration of my lease.

Applicant sign here _____
(First name, middle initial & last name)

ACCEPTANCE OF LESSOR(S) AND POWER OF ATTORNEY

The undersigned hereby accept(s) the terms of the foregoing application for lease for _____ years from _____ 19__ at a cash rental of $_____ per year and hereby request, authorize and empower the Superintendent of the Fort Hall Indian Agency to execute a lease on the land described a bove in accordance with the terms of this application and authorize him to perform every act necessary in negotiating and enforcing the lease. It is understood that the land will be leased in accordance with the rules and regulations governing the leasing of restricted Indian land for farming and grazing purposes as prescribed by the Secretary of the Interior. The Superintendent is hereby authorized to collect in addition to the annual rental stated above whatever amount is necessary to cover the Irrigation operation & maintenance assessment and to pay this amount to the Fort Hall Irrigation O & M Account.

_____ _____

_____ _____

_____ _____

Witnesses: _____

_____ _____

_____ _____

_____ _____

_____ _____

RECOMMENDATION:

_____

_____

_____ _____
(Date) (Extension Agent

been received, and the bid prices are noted for each allotment. The prospective lessee who bid the highest on an allotment, say, Ed Smith, on allotment Number 249, is notified and requested to call at the agency office to complete the transaction. Mr. Smith is given a "lease contract" form which has been completed except for the nece ssary signatures of the interested parties. On some reservations, the lessees are requred to obtain the signature or signatures of the lessors. On other reservations, the lease contracts are held until the lessors come into the agency offices. In either case, Mr. Smith is instructed that he must be underwritten by two bondsmen whose resources are ample to secure the fulfilling of the contract in case the lessee defaults. After all signatures have been obtained, the lease contract is handed to the superintendent and his approval constitutes the completed lease contract. Mr. Smith pays the lease rental in accordance with the terms of the contract, and the funds are placed in the lessor's "Individual Indian Money" account.

> Individual Indian moneys are funds, regardless of derivation, belonging to individual Indians, which come into the custody of a disbursing agent.[5]

The sources of individual Indian monies are lease

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[5]Code of Federal Regulations, Title 25 - Indians, Sec. 221.1.

rentals and trespass fees, annuity payments and other per capita payments, royalties and judgements, loans, and voluntary deposits. Field offices located usually at the reservation agencies maintain separtate accounts for each Indian, and on the accounts are recorded the receipts and the disbursements of the individual Indians.

The bookkeeping is set up so that the money belonging to the Individual Indian is held, usually, in the United States Treasury to the credit of the disbursing agent. In giving an Indian his money, the disbursing agent writes a Treasury check which operates to charge his official Treasury account.

Suppose, for example, that allottee No. 249 has leased his allotment to Ed Smith. Mr. Smith would be required to make his remittance either in legal tender or negotiable paper payable to the Treasurer of the United States to the disbursing agent. The disbursing agent deposits the money in the United States Treasury to the credit of his official checking account. Concurrently, the disbursing agent records the Ed Smith payment in the account of Allottee No. 249 maintained at the agency office. When the lessor wants his money, he goes to the reservation agency and receives a Treasury check drawn against the official checking account of and signed by the disbursing agent who records the disbursement on Allottee No. 249

individual account. Fundamentally, the transactions are between the Government of the United States and the disbursing agent for it is only the latter who maintains records of transactions affecting the individual Indian accounts. The following page is an "Individual Indian Money Ledger" sheet on which are recorded the infividual transactions of the Indian.

Generally, the expenditure and investment of individual Indian monies is controlled by the rules and regulations prescribed by the Secretary of the Interior subject to the Congressional requirement that the funds be used for the use and benefit of the Indian to whom the monies belong.[6] Checks drawn by the disbursing agent in favor of individual Indians must bear a citation of the section from the Secretarial rules and regulations which give the disbursing agent the authority to disburse the monies. Basically, the Secretarial rules and regulations are of two types - those of restricted use

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[6]The phrase "for the use and benefit" of the Indians has not been clearly defined, but the interpretation of the phrase by the Secretary of the Interior has not been challenged in courts even though it has been argued that his rules do not entirely conform with the Congressional requirement. For example, from lease rentals, there is deducted a lessor's fee which operates to absorb some of the overhead of the Agency. The Agency, however, is functioning for the total Indian population, and those who either do not have land to lease, or who do not lease their lands, receive some benefit from the fees deducted from the lease rental of those who do lease their lands.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

5-317a

Card No. _____

INDIVIDUAL INDIAN MONEY LEDGER

86

U. S. GOVERNMENT PRINTING OFFICE 6—6150

OLD BALANCE	DATE	VOUCHER NUMBER	REFERENCE	PAYMENTS	RECEIPTS		BALANCE
[redacted]							

and those of unstricted use of the money.

Section 221.4 of the Secretary's rules states:

> Whenever necessary, superintendents are hereby authorized to draw checks for monthly allowance of not to exceed $50 in favor of minors or adult Indians. This section should be cited as authority therefor. Specific authority must be obtained for larger amounts.

Section 221.5 of the Secretary's regulations authorizes the disbursing agents,

> to turn over without restriction to reasonably competent adult Indians not to exceed $500 in any one year, this section to be cited as authority therefor. The purpose of such payments to adult Indians not incapacitated by age or physical or mental infirmity is that they may be encourage to assume personal responsibility and to acquire that self-reliance and practical business experience which will enable them to become independent and progressive members of the community.

The sources of individual Indian monies appear to be numerous, but the funds belonging to individual Indians which come into the custody of a disbursing agent are effected by the attitude of Congress and the Court of Claims and the financial condition of the nation.

Almost all Indian tribes have claims, either of a legal nature or a moral nature, which are matters to be presented with the consent of Congress to the Court of Claims for adjudication.[7] For example, the Wind River

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[7]President Truman recently signed a bill which creates a special claims commission to adjudicate all Indian claims within ten years.

Reservation was established for Shoshone Indians on July 3, 1868. In 1876, the Government, without consulting the Shoshones, moved on gave to the Arapahoes, the Shoshones traditional enemies, half of the Wind River Reservation. The Shoshones petitioned Congress to pass legislation permitting them to bring suit against the Government for damages caused by violation of the Treaty of 1868 which established the reservation as Shoshone territory. The Congress and the Court of Claims were good to the Shoshones, and the Shoshone judgement fund of approximately $3,000,000 reuslted. From that fund, per capita payments were made to be expended in accordance with special regulations issued by the Secretary of the Interior.

The Menomonies also won a suit against the United States which swelled the individual Indians' accounts by approximately $6,000,000.00. The Fort Hall Shoshone Indians lost their suit which amounted to about $15,000,000.00. Thus, the attitude of the Congress and the Court of Claims affects the monies coming into the individual Indian accounts.

Of no little inconsequence either is the economic condition of the nation which has a bearing on the amount of money that finds its way into the Indians' accounts. At times when farm prices and livestock prices are at a

low level, the leasing business for farming and grazing purposes falls off and the result is that less money comes into the Indians' accounts. High farm prices and livestock prices encourage the use of land and the leasing business increases to the extent that the reservations contain productive land. Likewise increases in the demand for oil, gas, timber, and other resources of the reservations encourage business adventures and enterprises. Entrepeneurs lease Indian lands extensively when the economic condition of the nation seems to justify risk and undertaking, but when the economic barometer falls, the bottom seems to fall out of the leasing business. The table below indicates the trend of "individual Indian Money" from various sources during the period 1938-1944, Individual.

TABLE 5

Sources of Individual Indian Money All Reservations

Year	Timber Sales	Leases, Permits Royalties, Etc.	Per-Capita and Annuity Payments	Other
1938	$ 670,032	$ 4,254,861	$ 873,821	1,479,012
1939	950,327	3,924,632	1,479,898	1,987,707
1942	687,346	7,208,615	2,936,843	1,011,137
1943	463,162	8,403,084	3,822,926	1,882,056
1944	532,295	13,182,131	3,225,082	1,228,975
Totals	$3,303,162	$36,973,323	$12,338,570	$7,588,887

Source: Individual Income, Resident Population, 1944.

CONCLUSIONS

The most perpetual source of "Individual Indian Money" is in connection with the leasing of Indian lands. The amount of lease rentals is, generally, in the millions for lands leased on all reservations, (as indicated by Table 5) but behind the total amount is hidden the fact that Indians lands are leased at extremely low amount of rental per acre. For example, Table 4 indicates that the allotment of land comprising twenty acres of irrigates farming land has been under lease for one-half cent per acre. These low rents seem to originate out of the manner in which the "Guardian" offers its "wards" lands for lease.

Indian lands are leased out to the highest bidders. The amount of rent which is obtained for leased Indian lands, apparently, is based upon the assumption of the demand for land. At least, that would appear to be the only logical argument in favor of bids. Phychologically, bids start at the very lowest amount at which the lessee hopes to obtain possession of the land, and the bids seldom rise to the amount which the land indicates is rent-paying ability. The proof of this statement will be shown later. For the present, assume that Ed Smith is considering the advisability of leasing Allotment No. 249. Mr. Smith knows that there are going to be expenses

incurred in the operation of the land. He knows, furthermore, that besides the usual expenses, there will be the lease rental. His concern is, primarily, whether or not he will be able to recover at least the expenses and the rental he offers to pay. To him, it appears that rental is a cost of production which he must recover if he is to avoid a financial loss. If, therefore, he can reduce the total amount to be recovered by bidding a low amount of rental, his risk will be reduced, and, moreover, he will stand the chance of increasing his profits from operation. Any amount he bids less than the amount of rent indicated by the land to be rent-paying ability will accrue to him in increased profits. Thus, Mr. Smith bids with the expectation of obtaining the land at the lowest possible rental.

Bids are mandatory according to the rules and regulations of the Secretary of the Interior. Those rules and regulations, however, seem to contain a parody. On the one hand, the rules require the local administrators to obtain the highest rent, and on the other, they require the administrators to advertise Indian lands for lease in such a way as to obtain the "most competition possible." Obviously, the greatest amount of bidding, assuming indifference on the part of the bidders and no social influences exerted upon them, will ensue when no

rental values are listed in the advertisements. Conversely, the least amount of bidding will occur as the minimum acceptable values listed approach the correct amount of rent indicated by the rent-paying ability of the land. The situation is much the same as an auction sale where the greatest amount of bidding ensues when the bids are very low in comparison with the value of the auctioned merchandise, and as the amounts offered approached the value of the merchandise, the least amount of bidding occurs. When no rental values are listed - or to put it another way, when very low rental values are listed in the adertisement - the gateway is wide open for the lessees to bid the lowest amount of rental.

Apparently, the regulations of the Secretary of the Interior assume that the demand for land will raise the amount of rent offered by bids, but if the demand for land, taken by itself, were the prime consideration in the leasing of land, there would be, probably no unused land on the reservations. Nor, perhaps, would the areas of land leased greatly fluctuate from year to year. The reason there is unused land on Indian reservations is that operators cannot foresee the return of outlay from working some of the land. In other words, although there may be many farmers in the area, none will operate a tract

of land incapable of yielding produce sufficient to repay at least all expenses. Fluctuations in acres leased from year to year result not so much because of the increase or decrease in the number of land operators but, primarily, because of the business cycles. There are periods of business activity when the total outlay and a little more will be returned, and periods when not even all expenses can be recovered. Those fluctuating periods determine whether or not land will be used - or perhaps it is better to say, those periods will determine which grades of land are to be used. In 1932, for example, Mr. Smith would have been very hesitant in leasing the better grades of land. In 1944, he would willingly lease the less-desirable grades of land, and he would lease such lands to the extent that he could recover his expenses. Mr. Smith's decision of whether or not to lease the land, then, is based upon the probable marketability of the land produce at the prices at which he can recover his expenses. If Mr. Smith cannot forsee the sale of the produce, he will not lease the land regardless of how many other farmers there are around him. If he can sell the produce at the prices at which he can recover his expenses, he will willingly operate the land even though he can sell the produce of the land at the prices at which he

can recover what he considers the expenses of operation that he will undertake to operate the land.

Rent of land is a differential, and so considered it is the difference between the prices of the land produce and the costs of operation. Thus, after expenses of operation and the profits are deducted from the sale price of the land produce, the remainder is the rent of the land. The prices of the land produce are established by the law of supply and demand. The rent of land is the effect of those prices, and can be influenced only by changes in the prices of the land produce.

When the demand for land is considered as a factor in the determination of the amount of rent to be paid, it loses significance under social influences. Bidders on Indian lands are established resident - relatives and friends of long standing. One prospective resident-lessee of the Fort Hall Indian Reservation stated: "If John bid on that tract - I won't." Good neighbors, by the code of ethics, do not feel disposed to bidding against one another for the use of Indian lands, and the assumed purpose of bids to obtain the highest rental is thereby defeated.

As a direct consequence of Secretarial rules, apparently based upon the assumption that the demand for land will raise the rental bid to the affordable amount

as guaged by the rent-paying ability of the land, the rents paid by the lessees for the use of Indian lands is far below the amount of rent which the land indicates is rent-paying ability. Those who lease Indian lands absorb, as increased profits, a great part of the rent of land which should accrue to the Indian lessors. This is purely because of the low rentals which the "guardian" allows lessees to pay for the use of the "wards" lands.

Table 6 shows by amounts and by index numbers the aggregative values of the land produce on a certain Fort Hall Indian allotment of land. The aggregative values were computed upon the basis of the marketed land produce at the prices received by the lessee as reported by the Indian Irrigation Service. The table shows that from the base year 1942, the aggregative value of the land produce rose, by 1946, to an aggregate value of about three and one-fourth times the base year value. The table shows also by amounts and by index numbers the fall in rentals paid to the Indian lessors during the same period.

This example may be considered as representative since the rental paid to the lessors of approximately $10.00 per acre which was contracted for in 1942 is $2.00 higher than the average minimum acceptable bid listed in the advertisements for the season of 1947.

Table 6

WEIGHTED AGGREGATIVE INDEX NUMBERS

Values of Quantities Marketed Each Year at Selling Prices of Each Year

Year	Values of Products Marketed								Index Numbers Products		Index Numbers Rentals	
	Alfalfa	Barley	Potatoes	Wheat	Oats	Sugar Beets	Clover Seed	Other	Total Values	Percent of 1942	Amounts Paid	Percent of 1942
1942	$ 390	$ 103		$ 200	$ 63				$ 756	100	$196.86	100
1943	120		$ 1,210		192			$ 300	1822	241	193.50	104
1944	1350		570		126	$ 338			2,384	315	184.05	99
1945	275	328			65	750			1,418	188	184.05	99
1946			1,160	128	82		$1,100		2,470	327	184.05	99
1947	855	121	1,148*	192	79	638	85		3,418	452	240.00	128
1948	855	121	1,148*	192	79	638	85		3,418	452	240.00	128

* Based upon 63% No. 1 Potatoes; 21% No. 2, Remainder culls of no value.

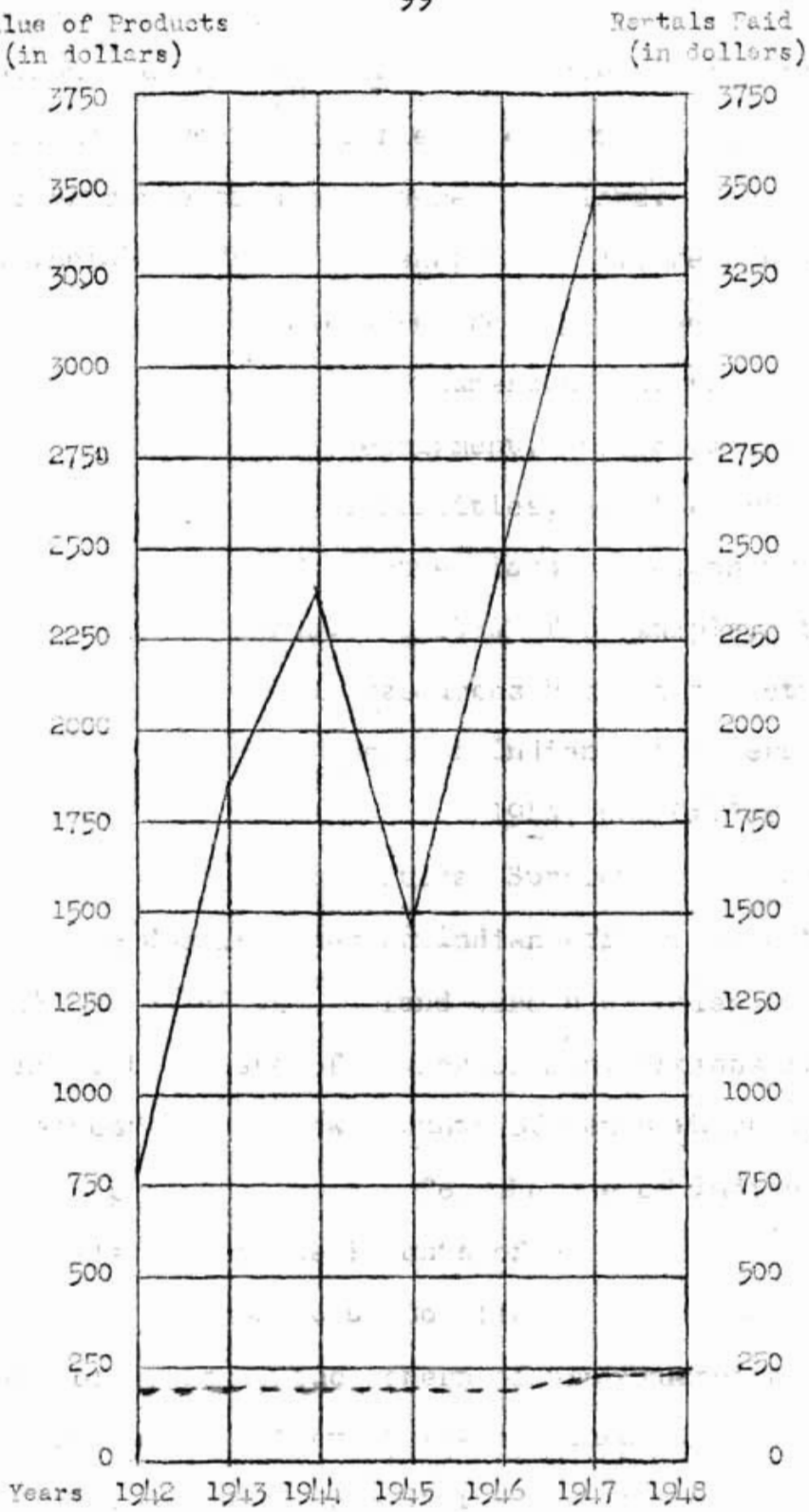
The table shows that, upon the basis of the computations, during the years the non-Indian lessee has absorbed differentials which should have been paid to the Indian lessors in rentals. The case in point would perhaps become more impressive if aggregative values are computed upon the basis of Federal AAA support prices during the years 1942 to 1946, inclusive.

Table 6 has been extended through the years 1947 and 1948 based upon Government support prices as of January 1, 1947, the average yield of each product during the years 1942-1946, and the newly-approved lease contract stipulating a rental of $12.00 per acre, which, incidentally, was the minimum acceptable bid listed in the advertisement for the allotment. The stipulated rental ($12.00 per acre) is only $3.00 below the highest minimum acceptable bid for all Indian land offered for lease, and is $4.00 higher than the average minimum acceptable bid for all Indian land on the reservation listed in the advertisements for the season of 1947.

Lease contracts, furthermore, do not allow for the fluctuations in rentals which should result from the rise and fall in the prices of the land produce. Indian lands may be leased for as many as five years at the same amount of rent; although, during the five-year period, the prices of the land produce may have undergone some drastic changes.

A glance at Diagram 5, which was prepared from the data in Table 6, will indicate this clearly. In 1942, the lessee negotiated a five-year lease contract on the allotment of land under consideration. His rent, according to the lease contract, was $11.00 per acre from which was deducted annual water assessments and lessor's fees leaving the indicated net rental paid to the lessors. During the war, the prices of farm commodities increased sharply, shown by the unbroken line in the diagram, and the rent of the land should have increased as a result of the increases in prices. However, because of the inflexibility of the lease contract negotiated in 1942, and because of the increasing water assessments during the years in which there was a decided increase in the rent-paying ability of the land, the net rental paid to the Indian lessors actually decreased. The fortunate lessee, purely through the failure of the "guardian" to protect adequately the incompetent "wards," realized the differentials which should have been paid to the lessors in rental.

Early in the history of the leasing of Indian lands, adroit and fast-thinking lessees turned the privilege to their own benefit. Today, Indian land continue to be exploited to the almost total benefit of the white lessees not so much because the lessees are dealing in



Aggregate values of Products Marketed and Rent Paid on a Twenty-acre Tract of Leased Indian Land

Values of Products ___ Rentals Paid ---

machinations but simply because the Government leases Indian lands by means of inflexible contracts and without a clear conception of the rent of land. The exploitation of Indian lands at the enrichment of the non-Indian leases continues to contribute greatly to the low plane of living among Indians. For numerous reasons, such as, lack of adequate capital, equipment, and knowledge; agedness and other physical disabilities, and the fractionated heirship status of allotted lands, Indians are driven to lease out their lands. In 1934, for example, it was estimated by the National Resources Board that between ten and fifteen million acres of Indian lands were under lease. During the calendar year 1944, the Office of Indian Affairs in the Statistical Supplement to the Annual Report of the Commissioner of Indian Affairs reported that 13,448,012 acres of Indian land were non-Indian operated. Accordingly, the plane of living of many Indians is limited almost to the low amounts of rents which the lessees are permitted to pay for the use of Indian lands.

While one of the intents of prevailing Indian policy may be assumed to be to alleviate the impoverished condition of Indians, the conern of the "guardian" for its "wards" in the matter of leasing lands does not seem to be profound enough to merit the recognition of the concept of the rent of land and to lease the Indian lands

in such a way as to require the lessees to pay for the use of the lands the full amount of rent according to the varying rent-paying ability of the land.

In anticipation of advertising Indian lands for lease, the "guardian" should ascertain the rent with a view of the probable prices of the commodities. Reasonable return on investment in machinery and equipment and opportunity wages should be allowed in order that the incentive and initiative of the lessees may not be repressed. The minimum acceptable bid listed in any advertisement should be the maximum amount of rent payable according to the rent-paying ability of the land. Furthermore, through appropriate wording in the lease contracts allowing for flexibility, the rent of the land from year to year can vary as the prices of the land produce vary from year to year. This provision of flexibility will encourage long-term leases which usually are preferable to short-term leases, ample protection, so far as rent is concerned, being automatically provided both to the lessors and the lessees.

The problem of obtaining for the Indian lessors the maximum amount of rent at all times according to the rent-paying ability of the land is one for which solution is many years overdue. If this problem had been solved in 1891, it would not have been possible for the

Flourney Livestock and Real Estate Company to turn a ten cent investment into a 900 per cent profit at the impoverishment of the Indian lessors. So long as the problem is not solved, Indian lands will continue to be exploited to the almost total benefit of the lessees who for the most part are non-Indian, and the Indians themselves will continue to bear the burden of the unsolved problem by living on the plane which low incomes from leased lands provide.

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